

# RULES AND FORMS

OF THE

## HOUSE OF COMMONS OF CANADA

WITH

### ANNOTATIONS, COMMENTS AND PRECEDENTS

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A COMPENDIUM OF CANADIAN  
PARLIAMENTARY PRACTICE

*Prepared for the Use of Members  
of Parliament*

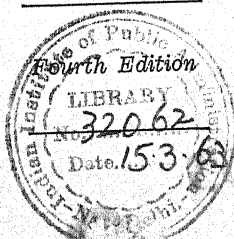
BY

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To  
THE HONOURABLE  
ROLAND MICHENER, Q.C.,  
SPEAKER OF THE HOUSE OF COMMONS,

THE FOURTH EDITION OF

**This Book**

BY HIS KIND PERMISSION

**Is Inscribed**

WITH THE DEEPEST RESPECT

by THE AUTHOR.

COUNTERSIGNED

## PREFACE

This book is essentially a compendium for rapid reference designed with a view to provide Members of Parliament with the rules required to discuss public affairs, pass legislation and check departmental administration. I have adopted Cushing's method of numbered paragraphs so that quotations may be easily found when referred to in debate. Each chapter of our Standing Orders has been treated by itself so as to present the principles, the authorities and the precedents. The Committees appointed to revise the rules in 1913, 1927, 1953 and 1955 have substantially curtailed debate in an endeavour to shorten the sessions, but they have failed in their purpose because lengthy sessions are not entirely due to debate. They are caused by the constantly increasing volume of legislation and the apparent impossibility for the Government and the Opposition to come to any understanding as to the time and opportunity of introducing controversial measures.

Until 1913, all motions, as a general rule, were debatable: Non-debatable motions were limited to rules of procedure. There were no restrictions to the discussion of the administration or national welfare. Debate was not allowed on incidental motions such as: That any member "be now heard" or "do now speak" (now S.O. 29); on an appeal from the Speaker's decision (now S.O. 12) on notices of motion for the production of papers marked with an asterisk (now S.O. 39) (1) and (2); for deciding as to the adjournment of the House to discuss an urgent matter (now S.O. 26), for the first reading of Bills (now S.O. 73 and 103). There were also certain restrictions consequent to logic, loyalty and courtesy sanctioned by usage which a Member was expected to observe when addressing the House. The previous question, an old proceeding originally introduced in England in 1607 for the purpose of side-tracking amendments was the one instance where the principle of complete freedom of speech was actually disregarded. Substantive motions were debatable. In 1913, the rule was reversed. All motions, according to a Standing Order then passed, are henceforth to be decided without debate or amendment except those specifically earmarked as debatable (now S.O. 32). The closure rule, now Standing Order 33, was adopted by the House on the 24th of April 1913. The House passed also a Standing Order which provides that when

the order for Committee of Supply is called on Thursdays and Fridays the Speaker leave the Chair without question put provided estimates shall first be taken up on other days. It abolished debate on the motion that the House shall go into Committee of the Whole at a later date to consider a proposed money resolution. It also decreed that a private member's notice of motion not proceeded with when called twice from the Chair shall be placed at the foot of the list and then, if disregarded when called again, shall be dropped; and it decided in addition that no member shall have more than one notice of motion at a time on the order paper.

In 1927, the House ordered that its daily sittings shall be adjourned at 11 o'clock without question put (S.O. 7), and it limited to forty minutes all Members' speeches except those of the Prime Minister, the Leader of the Opposition, a minister moving a government order, the member speaking in reply, and the mover of a motion of "no confidence" (S.O. 37). It also passed an order to the effect that only one amendment and one sub-amendment may be moved to the motion that the speaker leave the Chair for the House to resolve itself into Committee of Supply or Ways and Means.

Moreover, it repealed Standing Order 50 which read: "No bill relating to trade, or the alteration of laws concerning trade, is to be brought into this House, until the proposition shall have been first considered in a Committee of the whole House, and agreed unto by the House." Trade Bills were thereafter introduced as other public Bills; there was no more debate on a preliminary stage in Committee of the Whole.

In 1955, the House passed a Standing Order limiting to ten days the debate on the Address in Reply to the Governor General's speech (S.O. 38). It added Wednesdays to Thursdays and Fridays as the days on which the Speaker leaves the Chair without question put for the House to go into Committee of Supply (S.O. 56). It also decided that debate would only be allowed on the first six occasions on which that order is called, and it ordered that no debate on any motion, with or without amendment, that the Speaker leave the Chair for Committee of Supply shall exceed two sitting days with the proviso that, should debate, on any of the first five of the six occasions upon which Supply is called, be concluded before the expiry of the two sittings days "the unused time may be added in whole or in

subsequent one of the six motions to go into Supply" (S.O. 56). It cut out debate altogether on the order for the Committee of Ways and Means, except when the budget is brought down (S.O. 58); fixed at eight sitting days the length of the budget debate (S.O. 58); and it specified, that with the exception of these provisions for Supply and the Budget, the House shall always go into any Committee of the Whole without debate or amendment (S.O. 53).

In 1955, the House passed also section 3 of Standing Order 59 which reads: "No member, except the Prime Minister and the Leader of the Opposition, shall Speak for more than thirty minutes at a time in any committee of the whole House". It also decided that the House shall meet at 2:30 o'clock p.m. instead of 3 o'clock and adjourn at 10 o'clock p.m. reducing thereby four sitting days (Monday, Tuesday, Wednesday and Thursday) by half an hour each; and it ordered that it shall meet at 11 o'clock a.m. and adjourn at 6 o'clock on Fridays, making the sitting one hour shorter on that day (S.O. 2, 6). The length of the five regular sittings during a week is thereby reduced by three hours. Moreover a new Standing Order (No. 62) was passed cutting out debate altogether on the motion to concur in a report from any Committee of the Whole, which means Committee of Supply, Committee of Ways and Means and Committee of the Whole; and Standing Order 78 extends that order to all amendments made to Bills in Committee of the Whole. These radical changes abolishing the discussion of a large number of motions are really forms of closure far more restrictive than Standing Order 33 which applies only to questions that have already been debated.

The priceless work of Sir Erskine May brought to date by eminent Clerks of the United Kingdom House, Sir T. Lonsdale Webster and Lord Campion, is regarded, except for local circumstances, as an authority upon all matters respecting procedure. I have relied on it as well as on Sir John Bourinot's "Parliamentary Procedure" which has guided many a Speaker since its first appearance in 1884 and is still a safe guide on Canadian Parliamentary practice. The fourth edition edited in 1914 by Dr. Thomas B. Flint, Clerk of the House, carries great authority in our Parliament.

Definite rules are necessary if Parliament wants to solve its two main problems: first, how to find time for disposing of the growing mass of Government business, and secondly, how to

reconcile the Government's demands with the rights of the minority. The House cannot now carry on with wholly customary law, it had to regulate its course by Standing Orders and for this reason, books on procedure are proving their usefulness.

# TABLE OF CONTENTS

---

## PART I

### PUBLIC BUSINESS

#### General Rule

Procedure in unprovided cases .....	1
-------------------------------------	---

#### CHAPTER I

##### Sittings of the House

Times and days of sitting. — Morning sittings during debate on Address to His Excellency. — Quorum. — Speaker takes the Chair and receives Black Rod. — Attendance required. — Evening sittings. — Mid-day recess. — Evening adjournment. — Adjournment deferred. — Business interrupted. — Divisions. — Speaker's casting vote. — Personal interest in question. — Decorum. — Appeal from decision. — Withdrawal of Strangers. — Conduct of Strangers. ....	3
--	---

#### CHAPTER II

##### Business of the House

Prayers. — Routine Business. — Order of Business day by day. — Private Members' days. — Days Deferred. — Government days. — Bills not taken up on certain days. — Private and Public Bills. — Notices of Motions not printed. — Immediate consideration on matter of privilege. — Precedence on orders of the day. — Government Orders. — Orders not taken up, dropped or postponed. — When Senate and House disagree. — Receiving Messages from the Senate. — Motion to read Orders. — Adjournment and Intermediate Proceedings. — Adjournment motion for discussing urgent matter. — Copy of Journals for Governor General. ....	69
--	----

#### CHAPTER III

##### Rules of Debate

Member speaking — Members rising simultaneously. — Withdrawal of Members. — Speeches limited to 40 minutes. — Debatable Motions. — Closure. — Explanations. — Irrelevance. — Offensive Language. — Reading the Question. — Speaking twice. — Reply. ....	105
--	-----

## CHAPTER IV

## The Address

Address in Reply to His Excellency's Speech. — Appointed days. — Precedence. — Amendments disposed of. — Debate concluded. .... 141

## CHAPTER V

## Questions

Questions put to Ministers. — Oral Answers. — Starred Questions. — Printed Answers. — Question to stand as Notice. — Question made Order for Return. — Reports deposited with Clerk of the House. — Recorded in Votes and Proceedings. ... 145

## CHAPTER VI

## Notices

Required for Motions, Unanimous Consent. .... 157

## CHAPTER VII

Motions; Amendments; Notices of Motions; The Previous Question

To be in writing and read in both languages. — Privileged Motions. — Amendment on Motion to leave the Chair. — Amendment precluded. — Private Members' Amendment precluded. — Production of Papers. — Withdrawal of Motion. — Unparliamentary Motion. — The Previous Question. .... 161

## CHAPTER VIII

Deputy Speaker; Committees of the Whole; Supply; Ways and Means

Election of Deputy Speaker. — Term of Office. — Official Languages. — Deputy Chairman of Committees. — Order for House in Committee of the Whole. — Private Bills referred together. — Bills retaining precedence. — Committees of Supply and Ways and Means. — Order for House in Supply. — Leaving the Chair on certain days. — Six Motions first Order on Monday. — Appointed Days. — Debate on Motion to leave the Chair. — Debate not Concluded on Tuesday. — Question put on Amendments. — Second Motion proposed. — Question on Main Motion.



— Departments first taken up. — Interim supply and supplementary Estimates. — Estimates referred to Committees. — Order for Committee of Ways and Means. — Budget Debate. — Standing Orders of House observed in Committees of the Whole. — Relevancy. — Speeches limited to 30 minutes in Committees of the Whole. — Order maintained by Chairman. — Motion to leave the Chair. — Intermediate Proceedings. — Money resolutions not immediately entered upon. — Resolutions Concurred in forthwith. — Commons alone grant Aid and Supplies. — Pecuniary Penalties in Senate Bills. ....	187
--	-----

## CHAPTER IX

### Standing and Special Committees; Witnesses

Standing Committees. — Report by Printing Committee. — Special Committees. — Quorum. — Reports from Committees. — Certificate for Summons of Witnesses. — Payment of Witnesses. — Exceptions. ....	233
--	-----

## CHAPTER X

### Petitions

How and when presented. — No debate. — Members answerable. — Endorsation. — Regulations. — Signature and Prayer. — Reception of. — Immediate Discussion may be permitted. ....	255
--	-----

## CHAPTER XI

### Proceedings on Public Bills

Introduction. — Explanation of Provisions. — Imperfect Bills. — Motion for First Reading. — Printed before Second Reading. — Separate Readings. — Urgent cases. — Certificate as to Readings. — Two Readings before Committee. — Proceedings in Committee. — Proceedings reported. — Third Reading. ....	263
--	-----

## CHAPTER XII

### Offer of Money to Members; Bribery in Elections

A high crime. — Proceedings in case of Bribery. ....	293
--	-----

## CHAPTER XIII

**Internal Economy**

Report laid on the Table. ....	313
--------------------------------	-----

## CHAPTER XIV

**Effect of Prorogation on Orders for Returns**

Prorogation not to nullify order or address for returns. ....	315
---	-----

## CHAPTER XV

**Officers of the House**

The Clerk to care for records and supervise officials. — To make and distribute list of documents. — To employ extra writers. — Law Clerk. — Sergeant-at-Arms. — Completion of Work at Close of Session. — Travelling Expenses not allowed. — Hours of Attendance. — Vacancies. ....	321
--	-----

---

 PART II
**PRIVATE BILLS**

## CHAPTER XVI

Petitions. — Deposit of Bills and Fees. — Additional Charges. — Publication of Standing Orders. — Publication of Notices. — Examiner of Private Bills. — Model Bill. — Map or Plan with Petition. — Map or Plan with Bill. — Examination of Petitions for Private Bill. — Instruction to Committees. — Suspension of Rules. — Introduced on Petition. — Bills confirming Agreements. — Bills and Petitions referred. — Notice of Sitting of Com- mittee. — Voting in Committee. — Provision not covered by Notice. — All Bills to be reported. — Preamble not proven. — Chairman to sign Bills and initial amendments. — Notice of Amendments. — Reprinting of Bills when Amended. — Amend- ments by the Senate. — Record. — List of Bills. — Parlia- mentary Agents and Unprovided Cases. ....	335
---	-----

## PART III

## CHAPTER XVII

**The Library of Parliament**

Catalogue. — Access to during session. — Loan of Books. — Access to Library during recess. — Members borrowing Books. — Other persons borrowing Books. — Books of reference. — Report of Books missing. — Subscriptions for newspapers ..... 367

## CHAPTER XVIII

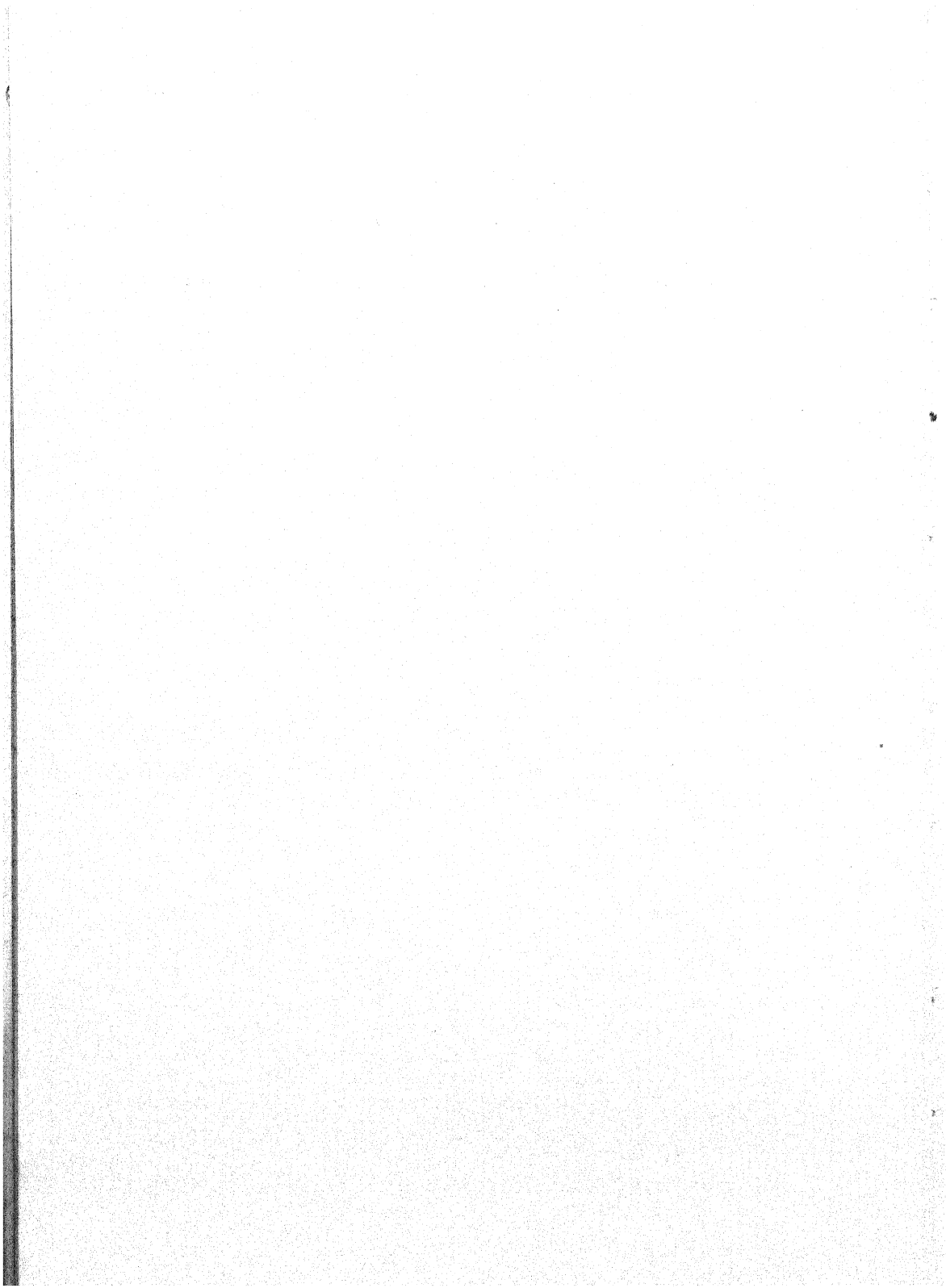
**Forms and Formulae**

Motions. — Amendments. — Petitions. — Notices, Formulae used by Members, Deputy Speaker and Speaker. .... 373

---

**APPENDIX**

The Constitution of Canada. — Official Secrets and Freedom of Speech. — The Senate and House of Commons Act. — The House of Commons Act. — The Members of Parliament Retiring Allowances Act. — The British North America Act, 1867-1952. — The Statute of Westminster. — The Financial Administration Act, 1951. .... 415



# INDEX OF FORMS AND FORMULAE

	Form	
<b>Motions—</b>	<b>No.</b>	<b>Page</b>
Acceptance of gift .....	88	393
Address in reply to Speech from Throne .....	2	373
Precedence to debate on .....	3	373
Engrossing and presenting .....	4	374
for the production of documents .....	64	388
Adjournment of debate .....	40	382
of House to discuss urgent matter .....	38	382
of House over holiday .....	33	381
Auditor General's report referred to Public Ac- counts Committee .....	32	380
Bill, leave to introduce .....	48	383
first, second or third reading .....	49	384
committal .....	50	384
referring back, generally .....	51	384
for particular reasons .....	52	384
final passage of .....	56	385
private, House in committee on .....	53	385
suspension of S.O. re posting of .....	54	385
refund of fees and charges .....	55	385
B.N.A. Act, to amend .....	89	393
Chairman to leave the Chair .....	28	379
Closure .....	84	392
Committee of Supply, appointment of .....	22	378
meeting of .....	24	379
referring estimates to .....	26	379
reviving, after it has lapsed .....	29	380
Ways and Means, appointment of .....	23	378
meeting of .....	25	379
the Whole, appointment .....	17	377
selection of Standing Committees (S.O. 65) .....	6	374
concurrence in report of S.O. 65 .....	7	374
standing, powers given to .....	8	375
joint, appointment of .....	13	376
concurrence in appointment .....	14	376
on printing, appointment .....	10	375
on the library, appointment .....	11	375
on the restaurant, appointment .....	12	375
special, appointment of .....	15	376
quorum of .....	9	375

	Form No.	Page
<b>Forms and Formulae: Motions—Con.</b>		
Concurrence in Special Committee Report .....	18	377
recommending expenditure .....	19	377
on Bill .....	20	378
in Standing Committee report .....	21	378
in Speaker's recommendation .....	85	392
Condemnation of officer .....	83	392
Conference with Senate when Senate insists on its amendments .....	60	387
when the House insists on its amendments .....	61	387
appointment of managers .....	62	387
Correspondence, motion for copy of.....	65	388
Debate resumed when adjourned under Routine Proceedings .....	47	383
Deputy Speaker, election of .....	5	374
Dividing complicated questions .....	70	389
Evidence, hearing of Senator's .....	87	393
returned to the Senate .....	86	393
Instruction to a Committee .....	16	377
Journals of the House, correction of entries .....	68	389
cancellation of entries .....	69	389
Member, put in custody .....	75	390
summoned to answer for his conduct .....	76	390
Speaker directed to reprimand .....	77	391
censure and suspension of .....	78	391
reprimand recorded .....	79	391
relief of reprimand .....	80	391
Notice of motion .....	81	391
Orders of the Day, for reading of .....	42	382
discharge of .....	43	383
proceeding to another order .....	44	383
reverting to .....	45	383
resuming suspended .....	46	383
Previous question .....	41	382
Printing of document forthwith .....	66	388
in both languages .....	67	388
Progress, motion to report .....	27	379
Reading a paper laid on the table .....	72	390
Resolution in Committee for granting supply .....	30	380
of ways and means .....	31	380
rescinding of .....	71	389
Return, motion for .....	63	387

	Form No.	Page
<b>Forms and Formulae: Motions—Con.</b>		
Senate amendments, agreeing to (in money bills)	59	386
disagreeing and giving reasons .....	58	386
concurrence in .....	57	385
Sittings of the House, morning .....	37	381
Saturday .....	36	381
suspension of .....	38	382
Wednesday evening .....	34	381
Government days .....	35	381
Sovereign's death .....	91	394
Speaker, election of .....	1	373
Treaty, approval of .....	90	394
Vote, rejection of interested member's .....	82	
Words taken down .....	73	390
decision that they be read .....	74	390
<b>Amendments—</b>		
Six Months' Hoist .....	92	396
On Second Reading of Bills .....	93	396
On Third Reading .....	94	397
On concurrence in Committee Report .....	95	397
To address in reply to Speech from the Throne .....	96	397
On going into Committee of Supply .....	97	398
On going into Committee of Ways and Means .....	98	398
On going into Committee of the Whole .....	99	399
Consequential Amendment to Senate Amendment .....	100	399
On report of Committee Resolution .....	101	399
On introduction of Bill .....	102	400
<b>Amendments to Amendments—</b>		
Sub-Amendments negatived .....	103	400
carried .....	104	401
<b>Petitions—</b>		
To Governor in Council .....	105	402
To Senate or Commons .....	106	402
<b>Members' Formulae—</b>		
By two members in case of a vacancy .....	107	403
By two members in case of Speaker's absence .....	108	403
Resignation of Member .....	109	404
Two Members' Warrant for new Writs .....	110	404
Notice for closure .....	112	406
Report of Conference Managers .....	113	406
Introduction of Member .....	114	406
Member's oath .....	115	406

	Form No.	Page
<b>Proclamation—</b>		
For calling parliament .....	111	405
<b>Speaker's Formulae—</b>		
On being elected .....	116	407
On arriving in the Senate after his election .....	117	407
On returning from the Senate after the Speech from the Throne .....	118	407
On returning from the Senate after a Royal Assent .....	119	408
After prayers .....	120	408
On introduction of a Bill .....	121	408
On Second Reading of a Bill .....	122	408
After having put a question .....	123	409
On receiving report from Chairman (without am- endment) .....	124	409
On receiving report from Chairman (with amend- ment) .....	125	409
On receiving report from Chairman (progress) .....	126	410
On receiving report from Chairman of Supply or Ways and Means .....	127	410
On a division .....	128	410
Adjourning the House .....	129	411
Appeal from Speaker's decision .....	130	411
Appeal from Chairman's decision .....	131	411
In the Senate for Royal Assent .....	132	412
<b>Deputy Speaker's Formulae—</b>		
Reporting a Bill without amendment .....	133	412
Reporting a Bill with amendment .....	134	412
Reporting progress .....	135	412
Reporting Supply or Ways and Means Resolution ..	136	413
Reporting a resolution .....	137	413



## ABBREVIATIONS

- A.—Anson. The Law and Custom of the Constitution.  
Blackmore.—Blackmore's Speakers' Decisions.  
B.—Bourinot's Parliamentary Procedure, 4th Edition.  
B.N.A.—British North America Act, 1867.  
C.—Campion. An Introduction to the Procedure of the House of Commons.  
Can. C.J.—Journals of the Canadian House of Commons.  
C.J.—Commons' Journals, (United Kingdom).  
Cong. Globe.—Congressional Globe.  
Cush.—Cushing. Law and Practice of Legislative Assemblies, 1874.  
D. & W.—Dodd & Wilbeforce.  
E. Hans.—Parliamentary Debates (Official Report) United Kingdom.  
Hatsell.—Precedents of Proceedings in the House of Commons, 1818.  
H.C.—House of Commons of The United Kingdom.  
H.C. Deb.—Debates of House of Commons in The United Kingdom.  
H. of C.—House of Commons of Canada.  
M.—May's Parliamentary Practice, 13th Edition.  
Man.—Manual of Procedure in the Public Business of the (British) House of Commons, 1912.  
Mirror of P.—Mirror of Parliament.  
Parl. Deb.—Parliamentary Debates (Official Report) (British).  
Red.—Redlich. The Procedure of the House of Commons.  
R.S.C.—Revised Statutes of Canada.  
Sen. J.—Senate Journals, (Canada).  
S.O.—Standing Orders.  
Todd.—Parliamentary Government in England.



# STANDING ORDERS AND RULES OF THE HOUSE OF COMMONS OF CANADA

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## PART I PUBLIC BUSINESS

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### STANDING ORDERS

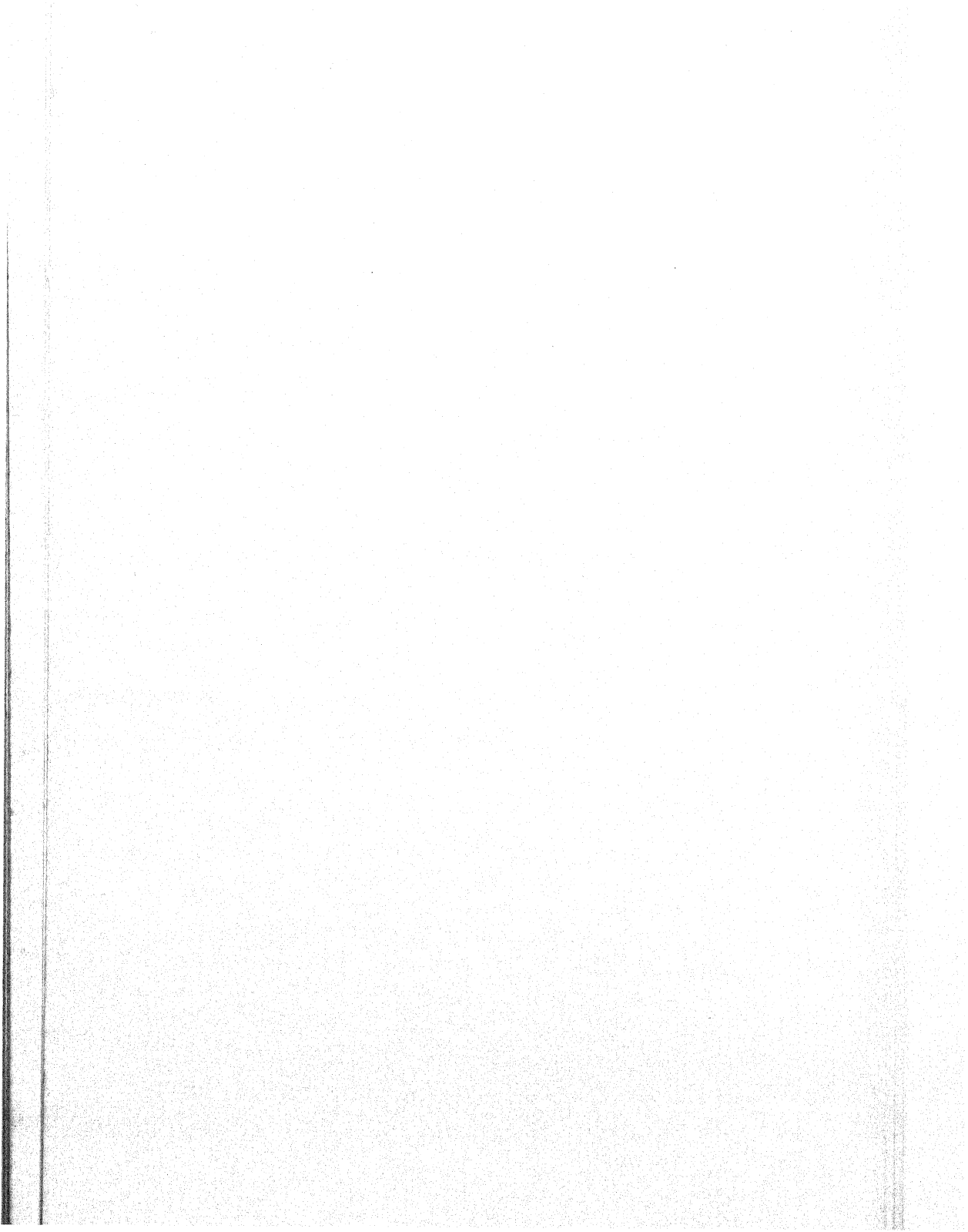
#### General Rule

##### PROCEDURE IN UNPROVIDED CASES.

1. \*[20th December, 1867; 10th July, 1906; 22nd March, 1927]. In all cases not provided for hereafter or by sessional or other orders, the usages and customs of the House of Commons of the United Kingdom of Great Britain and Northern Ireland as in force at the time shall be followed so far as they may be applicable to this House.

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\* Dates on which Standing Orders were passed and amended.



## CHAPTER I

### SITTINGS OF THE HOUSE

TIMES AND DAYS OF SITTINGS.

MORNING SITTINGS DURING DEBATE ON ADDRESS TO HIS EXCELLENCY.

QUORUM.

SPEAKER TAKES THE CHAIR AND RECEIVES BLACK ROD.

ATTENDANCE REQUIRED.

EVENING SITTINGS.

MID-DAY RECESS.

EVENING ADJOURNMENT.

ADJOURNMENT DEFERRED.

BUSINESS INTERRUPTED.

DIVISIONS.

SPEAKER'S CASTING VOTE.

PERSONAL INTEREST IN QUESTION.

DECORUM.

APPEAL FROM DECISION.

WITHDRAWAL OF STRANGERS.

CONDUCT OF STRANGERS.

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### STANDING ORDERS

2. [20th December, 1867; 10th July, 1909; 22nd March, 1927; 12th July, 1955]. (1) The House shall meet on Mondays, Tuesdays, Wednesdays and Thursdays at 2.30 o'clock p.m. and on Fridays at 11.00 o'clock a.m.

(2) Notwithstanding the provisions of section (1) of this standing order, the House shall meet at 11.00 o'clock a.m. on any day or days appointed for the consideration of the order for resuming debate on the motion for an Address in reply to His Excellency's speech and on any amendment proposed thereto, except Wednesdays and the first day so appointed when the House shall meet at 2.30 o'clock p.m.

(3) If at the time of meeting there be not a quorum, Mr. Speaker may take the Chair and adjourn the House until the next sitting day.

3. (1) B.N.A. Act, 1867, s. 48. The presence of at least twenty members of the House, including Mr. Speaker, shall be necessary to constitute a meeting of the House for the exercise of its powers.

(2) Whenever Mr. Speaker adjourns the House for want of a quorum, the time of the adjournment, and the names of the members then present, shall be inserted in the Journal.

4. [20th December, 1867]. When the Sergeant-at-Arms announces that the Gentleman Usher of the Black Rod is at the door, Mr. Speaker shall take the Chair, whether there be a quorum present or not.

5. [20th December, 1867]. Every member is bound to attend the service of the House, unless leave of absence has been given him by the House.

6. [12th July, 1955]. (1) At 6.00 o'clock p.m., except on Wednesdays and Fridays, Mr. Speaker shall leave the Chair until 8.00 o'clock p.m.

(2) At 1.00 o'clock p.m. on any day upon which a morning sitting of the House is held, Mr. Speaker shall leave the Chair until 2.30 o'clock p.m.

(3) At 6.00 o'clock p.m. on Wednesdays and Fridays and at 10.00 o'clock p.m. on Mondays, Tuesdays and Thursdays, unless hereunder otherwise provided, Mr. Speaker shall adjourn the House without question put until the next sitting day.

(4) When it is provided in any standing order that the business under consideration at the ordinary time of adjournment be forthwith disposed of or concluded, Mr. Speaker shall not adjourn the House until the specified proceedings be completed.

7. At the ordinary time of adjournment of the House, unless otherwise provided, the proceedings shall be interrupted and the business under consideration at the termination of the sitting shall stand over until the next sitting day when it will be taken up at the same stage where its progress was interrupted.

8. [20th December, 1867]. When members have been called in, preparatory to a division, no further debate is to be permitted.

9. [20th December, 1867]. Upon a division, the yeas and nays shall not be entered upon the minutes, unless demanded by five members.

10. [20th December, 1867]. Mr. Speaker shall not take part in any debate before the House. In case of an equality of voices, Mr. Speaker gives a casting vote, and any reasons stated by him are entered in the Journal.

11. [20th December, 1867]. No member is entitled to vote upon any question in which he has a direct pecuniary interest, and the vote of any member so interested will be disallowed.

12. [20th December, 1867]. (1) Mr. Speaker shall preserve order and decorum, and shall decide questions of order, subject to an appeal to the House without debate. In explaining a point of order or practice, he shall state the Standing Order or authority applicable to the case.

(2) When Mr. Speaker is putting a question, no member shall walk out of or across the House, or make any noise or disturbance.

(3) When a member is speaking, no member shall pass between him and the Chair, nor interrupt him, except to raise a point of order.

(4) No member may pass between the Chair and the Table, nor between the Chair and the Mace when the Mace has been taken off the Table by the Sergeant-at-Arms.

(5) When the House adjourns the members shall keep their seats until Mr. Speaker has left the Chair.

13. [20th December, 1867; 29th March, 1876]. If any member takes notice that strangers are present, Mr. Speaker or the Chairman (as the case may be), shall forthwith put the question that strangers be ordered to withdraw, without permitting any debate or amendment: Provided that Mr. Speaker, or the Chairman, may, whenever he thinks proper, order the withdrawal of strangers.

14. [20th December, 1867]. Any stranger admitted into any part of the House or gallery, who misconducts

himself, or does not withdraw when strangers are directed to withdraw, while the House, or any committee of the whole House, is sitting, shall be taken into custody by the Sergeant-at-Arms; and no person so taken into custody shall be discharged without the special order of the House.



## ANNOTATIONS, COMMENTS AND PRECEDENTS

**1.** Standing Order 1 was formerly Rule 116 which governed unprovided cases from 1867 to 1906. Its original form was: "In all unprovided cases, the rules, usages and forms of the House of Commons of the Kingdom of Great Britain and Ireland shall be followed." In 1906, it was amended to read as follows: "In all cases not provided for hereinafter by Special or other Orders, the rules, usages and forms of proceedings of the House of Commons of the United Kingdom of Great Britain and Ireland in force on the first day of July, 1867, shall be followed." In 1927, the present Standing Order 1 was adopted.

**2.** It is a cardinal axiom of the modern British Constitution that the House of Commons is the greatest of the powers of the state. . . . The Commons are armed with ample power of self-defence. If they use their power properly, they can only be mastered by a recurrence to the people, and the way in which the appeal takes effect is by the choice of another House of Commons more agreeable to the national temper. Thus the sole appeal from the verdict of the House is a rightful appeal to those from whom it received its commission. . . . The House of Commons is superior and by far superior, in the force of its political attributes, to any single power in the state.—Gladstone in *North American Review*, 1878.

**3.** It seems an excessive assumption to maintain that the House of Commons, or Parliament, does "actually and practically, in every way", directly govern the Kingdom. The House is still powerful, it is still influential in all departments of government, it is still a bulwark of public liberty, and still the worthy and splendid elective assembly of a great people. It does much and can do more. Even now its attributes are mighty, it does not cease to be interesting, and at times the world gazes enthralled upon the battles which rage within its walls. The show of power is with it, nor has it abated its pretensions, or diminished by one jot the assertion of its nominal authority. But it is undergoing the evolution which comes in turn upon most political organisms. Much of its efficiency has passed to other agents. Its supremacy is qualified by the growth of rival jurisdictions. Its own servants have become, for some purposes, its masters. The Cabinet has drawn to itself many attributes which the Commons are still

imagined to possess. The Electorate, more conscious of its own existence under an extended franchise, wields a direct instead of a delegated authority. And causes, internal to the House itself, have deprived it of some of its functions, and limited its exercise of others. These functions may be classified under the following heads: 1. Legislation; 2. Administrative and Executive Control; 3. Financial policy and management of the public revenue; 4. The discussion of abuses and the redress of grievances; 5. The testing and selecting of public men in debate, and their appointment to ministerial office. With all these matters the House is still concerned. But it is difficult to maintain that in any of them, except perhaps the last, it has conserved its own privileges without diminution.—Sidney Low, "The Governance of England", (1904).

4. The principles that lie at the basis of English parliamentary law, as Bourinot so aptly says, are: "to protect a minority and restrain the improvidence or tyranny of a majority; to secure the transaction of public business in an orderly manner; to enable every member to express his opinion within limits necessary to preserve decorum and prevent an unnecessary waste of time; to give abundant opportunity for the consideration of every measure, and to prevent any legislative action being taken upon sudden impulse." In a close contest when the House is considering a highly controversial measure, the positions of parties are equalized: the Government side may rely on its majority but the Opposition is strengthened by the rules of procedure which both are bound to observe and which the Speaker must enforce. Should there be dissatisfaction with his ruling, appeal can be made to the House, and each member will be answerable to his electors and to the country for the vote he gives on the division which then takes place.

5. The procedure of the House of Commons of Canada is quite different from that of the United Kingdom. Separated from the British Isles by a three thousand mile ocean, situated next to the United States, living in a country which covers half of the North American continent, with our heterogeneous population, our two cultures and our two languages, we have developed a parliamentary practice of our own based on British principles and yet clearly Canadian. Among the many diversities between the two systems are the following: our speaker and clerks at the Table do not wear wigs; our members vote

by standing up instead of walking to the lobbies; we have no chairmen's panel from which the chairman of each committee is appointed; our arrangement of public business is not divided into periods coinciding with Easter, Whitsunday and Michaelmas; our rule of closure is mild compared to that of the Imperial House where they have the drastic restrictions called the "guillotine" and the "kangaroo"; amendments to delete words from a motion are not preceded at Ottawa by the question: "shall the words proposed to be left out stand part of the question?" Our Standing Orders allow an appeal to the House from the Speaker's decision or the chairman's ruling but there is no such rule at Westminster.

6. There are many rules in the United Kingdom House which we have not adopted, such, for instance, as the standing orders respecting the week-end adjournment, the allotment of days for the discussion of the annual estimates, the appointment and quorum of committees, the introduction of members, the delivery of parliamentary papers, the consideration of unopposed private business and the ballot to obtain precedence for notices of motion. These are but a few of the many differences between the two systems and they show that we are far from having copied the procedure of the United Kingdom House of Commons. We have, however, accepted its principles on the rules of debate, the three readings of Bills, the budget, money resolutions, committees of supply and of ways and means and the presentation of petitions, but the application of those principles is made in our own way under a practice adapted to conditions in Canada. As Canadian procedure was based on British precedents in so far as circumstances permitted them to be followed in a new country, our Legislatures, from the days of the Constitution Act of 1791, naturally referred, in all cases of doubt, to the usages and customs of the House of Commons of the United Kingdom of Great Britain and Ireland, but they have never considered themselves bound by the Standing Orders in force at Westminster which govern local practice and are not applicable to any other legislative body than the one for which they were passed.

7. (1) Another collective right of the House is to settle its own procedure. This is such an obvious right—it has never been directly disputed—that it is unnecessary to enlarge upon it except to say that the House is not responsible to any external authority

for following the rules it lays down for itself, but may depart from them at its own discretion. This is equally the case whether a House is dealing with a matter which is finally decided by its sole authority, such as an order or a resolution, or whether, like a bill, it is the joint concern of both Houses. This holds good where the procedure of a House or the right of its members to take part in its proceedings is dependent on statute. For such purposes the House can "practically change or practically supersede the law." May 15, p. 60.

(2) "It seems that the House of Commons has the exclusive power of interpreting the statute, so far as the regulation of its own proceedings within its own walls is concerned and that, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly."

(Stephen J., in *Bradlaw v. Gossett*, 12 Q.B.D. p. 280-1.)

**8.** (1) The proceedings of the Houses (Senate and Commons) are governed by statutes, by rules and orders adopted by themselves, and by those usages which have grown up in the course of time and consequently become a part of their own practice or are derived from the common law of parliament by which they have consented to be guided in all matters of doubt.

(2) The usages of Parliament are to be collected from the entries in the journals, from the history of parliamentary procedure, from the treatises on parliamentary practice that have been published from time to time; and from the observations of experienced members, and the remarks of the speakers in the House of Commons, with relation to the forms and methods of proceedings, as contained in the published debates.

(3) "In the interpretation of the rules or standing orders the House is generally guided, not so much by the literal construction of the orders themselves as by the consideration of what has been the practice of the House with respect to them." B. 205, *Mirror of P.* Vol. 16, p. 1108-9.

**9.** (1) Standing and Sessional Orders are the rules and regulations, or, in other words, the by-laws, which have been expressly agreed upon by the House, for the government of its own proceedings. Standing Orders endure through successive sessions until repealed. Sessional orders are passed by the House in the course of a session and they have only a temporary

effect on its proceedings. There are also occasional orders which are undetermined in regard to their duration.

(2) "Standing" and "Sessional" Orders must not be mistaken for those orders which are constantly made with reference to matters pending in the House and by means of which the business of the House is carried on. For instance, when the Speaker puts the question, "When shall this Bill be read a Third Time?", the House has to appoint a date for that proceeding. The decision by which the date is appointed is an order of the House and it has to be placed on the Order Paper which is the agenda or program of the things to be done by the House. Some of these orders governing procedure apply to all Bills or motions and are directions that the House must follow to regulate the progress of its business. The order paper contains the orders on which debates take place, stages of Bills, the business of the Committee of Supply and Ways and Means, and motions.

**10.** Standing Orders may be suspended for a particular case without prejudice to their continued validity, for the House possesses the inherent power to destroy the self-imposed barriers and fetters of its own regulations. It may even pass an order prescribing a course of procedure inconsistent with the Standing Orders. A motion for such temporary suspension requires notice under Standing Order 41, but in urgent cases the notice can be waived under Standing Order 42. Any alteration in the regular procedure may be made effective by force of a simple resolution. This is one of the characteristics of British procedure and it has contributed in no small degree to the elasticity of our parliamentary system.

The practice is more stringent with regard to private Bills. Under Standing Order 102, no motion for the suspension or modification of any Standing Order applying to Private Bills or petitions for Private Bills shall be entertained by the House until reference is made to the Committee on Standing Orders, or to one of the Committees charged with the consideration of Private Bills, and a report made thereon by one of such committees. But even Standing Order 102 can be suspended by a motion if the House deems it advisable to do so.

**11.** An amendment to the Standing Orders which is only intended to settle a small detail in the procedure and on which there seems to be general agreement may be passed on a simple motion after notice has been given under Standing Order 41.

But if it is desired to make a general revision or to adopt some important rule, a special committee is appointed "to assist Mr. Speaker" for that purpose. The Speaker acts as chairman and the Clerk of the House acts as clerk of that Committee. When the report is presented to the House, a motion may be made to refer it to the Committee of the Whole where the proposed amendments can be amended and thence reported to the House for final adoption.

The rules known as "standing orders" were amended in 1876, 1906, 1910, 1913, 1927, 1940 and 1955.

**12.** The operation of orders or resolutions of either House of which the duration is undetermined is not settled upon any certain principle. By the custom of Parliament, they would be concluded by a prorogation, but many of them are, as part of the settled practice of Parliament, observed in succeeding sessions, and by different Parliaments, without any formal renewal or repetition. M. 150.

**13.** A statute regulation supersedes, and cannot be abrogated by, any order of the House to which it applies. An express order of the House, whether standing or occasional, supersedes every mere usage or precedent. In the absence of any express order "what can or ought to be done by either House of Parliament is best known by the custom and proceedings of Parliament in former times."—Cushing, 790. Hatsell IV, 491, note.

**14.** It was only in 1920 that women were given the right to sit in the House of Commons. The following amendment was then made to the Dominion Elections Act: "Except as in this Act otherwise provided, any British subject, male or female, who is of the full age of twenty-one years, may be a candidate at a Dominion Election."

For years it has been a moot point whether a woman could be called to the Senate. Section 24 of the British North America Act says: "The Governor General shall from time to time, by instrument under the Great Seal of Canada, summon qualified persons to the Senate; and subject to the provisions of the Act, every person so summoned shall become a member of the senate and a senator." The matter lay in abeyance until 1927 when five ladies distinguished in the public life of Alberta prepared a petition to the Governor in Council asking that the Supreme Court of Canada be requested to give a ruling as to the meaning

of Section 24. The government agreed and the Supreme Court in April, 1928, was invited to answer this question: "Does the word 'person' in section 24 of the British North America Act, 1867, include female persons?" When the judges reached a conclusion their answer was an emphatic "No." The issue was taken to the Judicial Committee of the Privy Council in England. On October 18, 1929, their Lordships gave a unanimous opinion reversing the judgment of the Supreme Court of Canada. They said:

"The word 'person' in sec. 24 of the B.N.A. Act, 1867, includes members of either sex; accordingly women having the qualifications enacted by sec. 23 can be summoned by the Governor General to the Senate of Canada.

"The provisions of the B.N.A. Act, 1867, enacting a Constitution for Canada, should not be given a narrow and technical construction, but a large and liberal interpretation, so that the Dominion to a great extent but within fixed limits, may be mistress in her own house, as the provinces to a great extent, but within certain fixed limits, are mistresses of theirs."

**15.** Members who object to be sworn may make a solemn affirmation if the taking of an oath is contrary to their religious belief. The oath is required under section 128 of the British North America Act and it may be administered either by the Governor General or a person authorized by him. In accordance with Instructions passed under the Royal Sign Manual and Signet on the 15th June, 1905, the Governor General is authorized to administer the oath of allegiance or affirmation to persons who shall hold places of trust in Canada in the form provided by an Act passed in the thirty-first and thirty-second years of the Reign of Queen Victoria intituled: "An act to Amend the Law relating to Promissory Oaths." Affirmation, though not mentioned in the British North America Act, is allowed under the authority of the above Instructions.

The Oath taken by the member of Parliament in Great Britain is: "I, ....., do swear that I will be faithful and bear true allegiance to His Majesty King ....., his heirs and successors, according to law." In Canada the same oath is administered to every member "before taking his seat", but the words "his heirs and successors according to law" are omitted, probably because under Section 2 of the British North America Act, the provisions thereof relating to the Queen (or

King) extend also to the heirs or successors of Her (or His) Majesty.

**16.** (1) It is not the oath that makes a person a Member of the House. He must be a Member before being sworn in. Unless he has first been duly elected under the terms of the Dominion Elections Act, he cannot take the oath. The object of the oath is to allow the Member to take his seat in the House. In accordance with this interpretation of the law, Members-elect as soon as their election is reported to the Clerk by the Chief Electoral Officer may receive such requisites as are necessary for the performance of their public duties. But if, for some reason or other, a Member were precluded from taking the oath and sitting in the House, he would be deprived of his sessional indemnity.

(2) Should a member violate his oath he would be amenable to the penalty of not being allowed to sit in the House of Commons. He may be suspended from taking part in the sittings while still remaining a member of Parliament, or, in a case of extreme gravity, a Bill might be passed to annul his election. It may happen, when a state of war exists, that a member of Parliament makes, either outside or on the floor of the House, statements detrimental to Canada and favourable to the enemy. This would be in violation of his oath because allegiance to the King means allegiance to the Country, and the offence would be liable to punishment by the House. The power of dealing with treason is inherent in the Parliament of every country.

**17.** Every member as soon as he is chosen becomes a representative of the whole body of the Commons, without any distinction of the place from whence he is sent to Parliament. . . . that every member is equally a representative of the whole has been the constant notion and language of Parliament. Every member, though chosen by one particular district, when elected and returned, serves for the whole realm. For the end of his coming thither is not particular, but general, not barely to advantage his constituents, but the commonwealth. See Blackstone, Vol. I, p. 159.

In November, 1774, Edmund Burke was invited, on short notice, to stand for one of the two vacant seats at Bristol. He was a stranger to the place, but his colleague was a local gentleman of accommodating nature, who expressed his willingness to carry out any instructions which he might receive from his constituents. Burke was duly elected, and in his subsequent



address to the electors he touched on the topic of instructions to members. This is what he said:

“Certainly, gentlemen, it ought to be the happiness and glory of a representative to live in the strictest union, the closest correspondence, and the most unreserved communication with his constituents. Their wishes ought to have great weight with him; their opinion high respect; their business unremitting attention. It is his duty to sacrifice his repose, his pleasures, his satisfactions, to theirs; and above all, ever, and in all cases, to prefer their interest to his own. But, his unbiassed opinion, his mature judgment, his enlightened conscience, he ought not to sacrifice to you, to any man, or to any set of men living. These he does not derive from your pleasure; no, nor from the law and the constitution. They are a trust from Providence, for the abuse of which he is deeply answerable. Your representative owes you, not his industry only, but his judgment; and he betrays, instead of serving you, if he sacrifices it to your opinion.

“My worthy colleague says his will ought to be subservient to yours. If that be all, the thing is innocent: if government were a matter of will upon my side, yours, without question, ought to be superior. But government and legislation are matters of reason and judgment, and not of inclination; and what sort of reason is that, in which the determination precedes the discussion; in which one set of men deliberate, and another decide; and where those who form the conclusion are perhaps three hundred miles distant from those who hear the arguments?

“To deliver an opinion is the right of all men; that of constituents is a weighty and respectable opinion, which a representative ought always to rejoice to hear; and which he ought always most seriously to consider. But authoritative instructions, mandates issued, which the member is bound blindly and implicitly to obey, to vote and to argue for, though contrary to the clearest conviction of his judgment and conscience,—these are things utterly unknown to the laws of the land, and which arise from a fundamental mistake of the whole order and tenor of our constitution.

“Parliament is not a congress of ambassadors from different and hostile interests; which interests each must maintain, as an agent, and advocate, against other agents and advocates; but Parliament is a deliberative assembly of one nation, with one interest, that of the whole; where, not local purposes, not local prejudices, ought to guide, but the general good, resulting from

the general reason of the whole. You choose a member indeed: but when you have chosen him, he is not a member of Bristol, but he is a member of Parliament."

**18.** We use the words "House of Commons" very often without pausing to reflect upon what those words mean. The word "Commons" means the people. This is the house of the people, sitting on both sides of this house; and on both sides of the Speaker are representatives of every constituency of Canada. Collectively those of us who meet in this Chamber represent all Canadians. That is our responsibility! That is our duty. Our rights are important only to the extent that those rights represent the rights of the people themselves. If the traditional rights of the members of this House are released, limited or arbitrarily curtailed in any way, it is not our rights that are of concern. What is vitally important is that in that curtailment of rights—there is a limitation of the rights—of the people themselves. The freedom that we have here to shape and guide legislation, no matter on which side of the House we may sit, is part of the very freedom which we cherish here in this country of ours. It is here in the House of Commons, to which all the people of Canada must look for just laws properly considered and properly made, that Canadians in every part of Canada must look for the greater part of their freedom and for the assurance of that type of government which will be itself an expression of the freedom which has come down to us through so many generations of sacrifice and of tremendous efforts. Hon. George Drew, H. of C. Jan. 4, 1956.

**19.** There is no constitutional legislation with regard to the boundaries of the members' constituencies which are fixed, after the decennial census, by a Select Committee of the House. Owing to the vastness of Canadian territory and the desirability of having distant regions and divers elements represented, there is no similarity in the areas ascribed to the electoral divisions. Some are extensive, others are comparatively small. The population of rural counties is much smaller than that of urban divisions.

**20.** Every member is provided with a seat and desk to which is affixed a card with the name of the occupant to whom it has been allotted. The members of the Privy Council and those supporting the Administration of the day occupy places to the right of the Speaker as far as they can be accommodated, and

the members of the Opposition to the left. The oldest members are generally given preference in the choice of seats. The Leader of the Opposition sits directly opposite the Prime Minister. The members who do not support the Government and do not belong to the Opposition party should all be considered as Independents.

**21.** The introduction of members elected at by-elections is not required under the British North America Act or any Statute. Members were introduced in the Dominion Parliament until 1875 in compliance with an old resolution passed in England in 1688. The practice still prevails in England, but, in Canada, it was departed from at the opening of the session of 1875 when twenty-one members elected during the recess took their seats without having been introduced while several members elected during that session went through the ceremony of an introduction.

Whether members are elected in recess or during sessions is immaterial. The introduction is a custom and does not affect a member's right to take his seat. When the Chief Electoral Officer's report of an election has been tabled and a member has taken the oath and signed the Roll, he is to all intents and purposes a Member of the House of Commons and may take his seat without any ceremony. If he insisted on his right, the Speaker would have to decide that introduction is a tradition which cannot override provisions of the law.

**22.** (1) In 1878, the Speaker, Hon. T. W. Anglin, resigned his seat and was re-elected during recess. When the session opened, he and other members took the oath, signed the Roll and were in their seats at the sitting called for the election of the Speaker. Mr. Mackenzie moved that Mr. Anglin take the Chair as Speaker. Sir John A. MacDonald objected on the ground that Mr. Anglin had not been and could not be introduced until there was a Speaker and therefore he was not yet a member and could not be elected as Speaker. Mr. Mackenzie retorted that introduction was not essential and the House agreed with him.

(2) In the session of 1938, Hon. Earl Rowe, Member for Dufferin-Simcoe, who had resigned and had been re-elected during the recess, took his seat without being introduced to the Speaker. He had attended the whole session of 1937, including prorogation, his place had not been taken by a new member nor had his constituency been vacant during a session after his

resignation. He was again in attendance as the same member for the same electoral division, the House was fully acquainted with him, and there was no need in going through the formality of an introduction.

**23.** It will be noted that, under section 38 of the British North America Act, the Governor General is bound to summon and call together for the session the House of Commons only, not the Senate. This seems to be a surviving trace of the Lord's contention that their attendance in Parliament did not depend entirely on the royal will but that their hereditary titles conferred a right to sit in Parliament. (See May, 13th Ed., p. 5). Although senators are not peers, the authors of the British North America Act, in drafting this section, did not want to be at variance with an old accepted doctrine. But the Governor General, in spite of section 38, issues his Proclamation "To Our Beloved and Faithful Senators of the Dominion of Canada and the Members elected to serve in the House of Commons of Our said Dominion, and to each and every one of you." He commands and enjoins them personally to be and appear on a certain date at Ottawa "for the dispatch of busines to treat, do, act and conclude upon those things which in Our said Parliament of Canada, by the common council of Our said Dominion, may, by the favour of God be obtained." In the Speech from the Throne, His Excellency addresses both the "Members of the Senate" and "Members of the House of Commons" except when he refers to the yearly financial statement for which a special paragraph is included for the attention of the Commons only.

**24.** The Senate and Commons cannot open a session by their own authority. It is by the act of the Crown alone that they can be assembled, but the Governor General's power is restrained within certain limits. Section 20 of the British North America Act declares that there cannot be an interval of twelve months between two sessions, which is emphasized by the practice of providing money for the public service by annual enactments. The Governor General's authority is only theoretical, as Parliament is always summoned by advice of the Privy Council. There is no time limit under our laws between the proclamation and the meeting of Parliament. The opening of the session may, however, be deferred by proclamation from the day to which it stands summoned to any further day, but, then it cannot be called for an earlier date. Under special circum-

stances, like in war time, the House, prior to adjourning the session to a fixed day, may pass a resolution to the end that the Speaker may, after consultation with the Government, call the House to resume its sittings at any time.

**25.** (1) Until the cause of summons has been formally declared by the Governor General, the Lower House cannot proceed upon any business whatever. The Speaker's election is the only business that can be done, and that is no exception to the rule, since the House is authorized under Section 44 of the British North America Act to perform this duty without which the House of Commons is not completely organized. The Speaker of the Senate, however, being appointed by the Governor General, is sworn and takes his seat, and new Senators are admitted as soon as the Senate meets. Sen. J. (1879), 15-19. Ib. (1887) 2-8; Ib. (1891) April 29. Ib. (1901) 11-12.

(2) The Governor General does not come in person to the Parliament Building but he is represented by a Deputy, either the Chief Justice or one of the judges of the Supreme Court of Canada duly commissioned, on the day when the Members of the House, not having yet chosen a Speaker, assemble and go to the Senate in compliance with the summons calling Parliament for the despatch of business.

(3) In every session but the first of a Parliament, as there is no election of a Speaker, nor any general swearing of members, the session is open at once by the King's speech without any preliminary proceedings in either House. Until the causes of summons are declared by the King, either in person or by a commission, neither House can proceed with any public business; but the causes of summons, as declared from the Throne, do not bind Parliament to consider them alone, or to proceed at once to the consideration of any of them. M. 15th Ed., 275.

(4) On returning from the Senate after the speech from the Throne has been read, the Speaker reports that when the House attended His Excellency, the Governor General this day His Excellency was pleased to make a speech to both Houses of Parliament, of which he had, to prevent mistakes, obtained a copy.

**26.** When the Speaker has not yet been chosen and the members are all in their seats, at three o'clock on the day appointed for the opening of the session, and the Clerk with the Clerk Assistants are in their places at the table, the Gentleman Usher of the Black Rod presents himself at the door of the

Commons and strikes it three times with his rod. The door is opened and he announces his message to the Sergeant-at-Arms who walks to the Table, makes an obeisance and, addressing the Clerk, says: "A message from the Deputy of His Excellency the Governor General." The Clerk says: "Admit the Messenger." Black Rod then advances up the middle of the House, where he says in English and French: "His Honour the Deputy of His Excellency the Governor General desires the immediate attendance of this Honourable House in the Chamber of the Honourable the Senate." The members, preceded by the Clerk of the House and the Clerk Assistants, go immediately to the Upper House. The Usher of the Black Rod, the Sergeant-at-Arms (without the Mace), two constables and the Chief Messenger march in front of them in order to make the way clear for them in the execution of their important duty. On their arrival in the Senate, they stand silently at the bar facing the Deputy Governor who is seated at the foot of the Throne. They receive the following Message delivered by the Speaker of the Senate: "I have it in command to let you know that His Excellency the Governor General does not see fit to declare the causes of his summoning the present Parliament of Canada until a Speaker of the House of Commons shall have been chosen, according to law; but this afternoon, at the hour of ..... o'clock, His Excellency will declare the causes of his calling this Parliament." The members return to their Chamber and proceed at once to the choice of a Speaker. The Clerk presides at these preliminary proceedings and will stand up and point to a member when he rises to speak. A member, usually the leader of the Government in the Commons, will propose the name of some other member, then present, in these words: "That ..... do take the chair of this House as Speaker." This motion is duly seconded and put by the Clerk, and in case there is no opposition it will be resolved, *nemine contradicente*, "That ..... do take the chair of this House as Speaker." The Clerk having declared the member in question duly elected, the proposer and seconder will accompany him from his seat to the chair, where standing on the upper step he will "return his humble acknowledgments to the House for the great honour they had been pleased to confer on him by unanimously choosing him to be their Speaker." The Mace will then be laid on the Table. The person proposed should always be present, and should be properly a member upon whose seat there is no probability of a question.

**27.** (1) In case there is opposition, and two or more candidates are proposed for Speaker, not as amendments but as separate motions, the Clerk will continue to point to each member as he rises, and then sit down; and when the debate is closed, he will put the question first proposed, and if the majority decides in favour of the motion, the Speaker-elect will be immediately conducted to the chair, but if it be otherwise, the second motion will be submitted to the House; and if it be resolved in the affirmative, the member so chosen will be conducted to the chair.

(2) If a vote is taken and there is equality of voices, the House not being then constituted, there is no casting vote and the question remains undecided. Section 49 of the British North America Act says: "Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote." A decision to reject as well as to accept a motion must be given by the majority. A tie vote, when the Clerk is in the Chair, is not a decision. The standard authorities being silent on the question, the Clerk of the British House, Sir T. Lonsdale Webster, was consulted and in a letter written to the Clerk of the Canadian House in November, 1925, he said: "My personal opinion on the precise question asked by you is that in the event of an equality of votes on the first question (i.e., on the first name) proposed from the Chair, the question should be treated as void and the question should be proposed on the second name. I am quite clear that a Clerk of the House has not any power of voting. The question not having received a majority of votes in its favour has not been decided one way or the other, and the decision should be treated as void."

(3) In 1916, the Clerk announced the vacancies in the membership and the elections of new Members prior to the appointment of the Speaker. This procedure was not regular, because the Clerk does not preside over the House but he occupies the Chair at a meeting of the Members called for the purpose of completing the House by the election of a Speaker. This was pointed out by Sir John A. Macdonald in 1878 at the sitting held for the choice of a Speaker. He then said, as reported in Hansard of February 7th: "Mr. Patrick, I conceive that you cannot, as Clerk of the House, undertake to perform the duty of Speaker, and to make these announce-

ments. I object to your doing so. Your only duty is, if any member speaks, to point to him and mention his name." (Deb. Feb. 7th, 1878.)

**28.** (1) The choice of Speaker is the choice of this House. The House chooses and elects its Speaker; he is in no sense the choice of the Government—in no sense the choice of the Prime Minister. In the British House, this has been the practice since the earliest times; we have followed that custom in equal degree and with equal fidelity. Indeed, in the British Parliament it has never been the practice even for a Member of the Government to move or second the selection of a Speaker; that is left to the private members. (Rt. Hon. A. Meighen, Can. Deb., March 8, 1922.)

(2) Mr. Pitt once intended to propose Mr. Addington, but Mr. Hatsell, Clerk of the House, on being consulted by Mr. Addington said: "I think that the choice of the Speaker should not be on the motion of the Minister. Indeed an invidious use might be made of it, to represent you as the friend of the Minister, rather than the choice of the House." Mr. Pitt acknowledged the force of this objection. A county and a borough member are generally selected for proposing and seconding the Speaker. In 1868, a borough and a university member performed this office. When a Speaker is re-elected without opposition, it has been usual for the proposer and seconder to be taken from different sides of the House. In Session 1919, in the United Kingdom, two senior members of the House chosen from the parties constituting the coalition majority acted as proposer and seconder.

**29.** The Speaker's chair is a gift to the Canadian House of Commons by members of the Empire Parliamentary Association to replace the chair destroyed by the fire of 1916. The presentation was made on May 20th, 1921, by the Right Honourable James W. Lowther, ex-Speaker of the United Kingdom House and joint President of the United Kingdom Branch of the Association who said in part: "The chair is something more than a mere gift of friendship on the part of the Empire Parliamentary Association. It acknowledges, I think, in its presentation by us and its acceptance by you, the great principle which has been accepted by Great Britain and by all the Dominions within the British Empire, that Government of the people, by the people, and for the people, is best carried out



through Parliamentary institutions. That is the best method by which a free people can govern themselves, and by which their aspirations or their aversions can be either realized or removed”.

The Right Honourable Arthur Meighen, the prime minister said, *inter alia*:

“This chair will embody for us British traditions, it will remind us from day to day, through the stern trials of the future, of British wisdom and British patience. In Canada we are not all of one race; a large part are of French descent. But I shall echo and anticipate the words of those who in the ceremony of this afternoon will especially represent French Canadians, just so far as to say that they as well as we of Anglo-Saxon blood are attached to the free institutions that we inherit from old England, that they believe as firmly as we in the essential rightness and fitness of the form of Government that she developed and that now is ours.”

Hon. Mr. Mackenzie King, leader of the Opposition said:

“The constituent elements of Parliament here represented do right in regarding the present moment as one of historic significance. There are under British parliamentary institutions two symbols of authority—the Crown, which speaks of the sovereignty of loyalty, the speaker’s Chair, which speaks of the sovereignty of the people. That, under the aegis of the British flag, those two sovereignties have blended into one is a tribute not less to the character and devotion to duty of the occupants of the British throne than to the genius of the British peoples in the art and science of government.”

On the right hand side of the chair, the following phrases are incised in gothic type:

*Nec prece nec pretio.* (Neither by entreaty nor bribery.)

*Libertas in legibus.* (Liberty under the laws.)

*Hostis honori invidia.* (Envy is the foe of honour.)

On the left hand side:

*Manus justa nardus.* (An impartial hand is an aroma.)

*Memor et fidelis.* (Mindful and faithful.)

*Mens conscia recti.* (A mind conscious of rectitude.)

The presentation of the chair to the House has naturally led to the abolition of the custom that the Speaker, on the completion of his term of office, carried off, as a souvenir of service, the chair which he had occupied during his tenure of office.

**30.** (1) A few minutes before three o'clock, on the day following his election, and every sitting day thereafter, the Speaker and his suite leave his library for the Chamber. They march in the following order: The chief constable and two sergeants, the chief messenger and the door-keeper, the Sergeant-at-Arms bearing the Mace, the *Speaker*, the Clerk of the House, the Clerk Assistants. A page-boy, walking to the Speaker's right, carries papers to be read by the Speaker. They proceed to the Hall of Fame and the front corridor. At the Chamber door, the men who precede the Mace halt and stand at attention whilst the others enter the Chamber. Members who may then be in their seats rise as the Speaker walks to the chair. The Sergeant-at-Arms stops at the end of the table, waits until the Speaker has taken the chair, places the Mace on the table, bows and goes to his desk. When there is a quorum present the Speaker reads prayers, the Clerk saying Amen at the end of each invocation.

(2) At the hour fixed for the purpose of appearing before the Governor-General for the formal opening of Parliament, the Speaker, before the doors are opened, will communicate to the House a letter from the Governor-General's Secretary, stating that His Excellency shall, at a certain hour, proceed to the Senate Chamber to open the session of the Dominion Parliament. The door is then closed and supposed to be barred, as a reminder of the "storm and stress" period of the British House's history. The Gentleman Usher of the Black Rod makes his appearance a few minutes later, the door is rapped three times, and the Sergeant-at-Arms opens it. The Gentleman Usher announces that he carries a Message from His Excellency the Governor-General. The Sergeant walks to the table, bows and says: "Mr. Speaker, a Message from His Excellency the Governor-General." The Speaker says: "Admit the Messenger." The Sergeant takes the Mace from the Table, and carrying it on his shoulder, walks as far as the door, where he informs His Excellency's messenger that he may appear before the House. Both come in and the Sergeant stops inside the bar holding the Mace with the small end resting on the floor until the message is delivered. The Gentleman Usher advances past the bar, bows, walks to the middle of the Chamber, stops and bows a second time, then he comes as far as the table where he bows again and says in English and French:

“Mr. Speaker, His Excellency the Governor-General desires the immediate attendance of this Honourable House in the Chamber of the Honourable the Senate.”

Then he retires without turning his back upon the House and making three obeisances. A procession is immediately formed, consisting of Black Rod, the Sergeant-at-Arms carrying the Mace, three constables, the door-keeper, a messenger and a page boy. A short distance behind come Mr. Speaker, the Clerk of the House and the Assistant Clerks. Members follow and thus the House proceeds to the Senate.

**31.** (1) The Speaker on arriving in the Senate, after his election, walks to a small platform at the bar, and takes off his hat to His Excellency who does likewise in acknowledgment. The Governor General, in his official uniform, is then seated on the Throne having to his left Her Excellency occupying a chair just outside the dais of the Throne. The Prime Minister stands on the right and the Leader of the Senate on the left, both in First Class Privy Councillors' uniforms. Members of the House of Commons cluster around their Speaker and remain standing. When they are all in attendance, the Gentleman Usher of the Black Rod calls “Order”. Complete silence must then be kept.

Then the Speaker having been elected at the first sitting of a new Parliament, will address the Governor General as follows:

“May it please Your Excellency:

The House of Commons have elected me as their Speaker, though I am but little able to fulfil the important duties thus assigned to me.

If in the performance of those duties, I should at any time fall into error, I pray that the fault may be imputed to me, and not to the Commons, whose servant I am, and who, through me, the better to enable them to discharge their duty to their King and Country, humbly claim all their undoubted rights and privileges, especially that they may have freedom of speech in their debates, access to Your Excellency's person at all seasonable times, and that their proceedings may receive from Your Excellency the most favourable construction.”

On behalf of His Excellency, the Speaker of the Senate will reply:

"Mr. Speaker,

I am commanded by His Excellency the Governor-General to declare to you that he freely confides in the duty and attachment of the House of Commons to His Majesty's Person and Government, and not doubting that their proceedings will be conducted with wisdom, temper and prudence, he grants, and upon all occasions will recognize and allow their constitutional privileges.

I am commanded also to assure you that the Commons shall have ready access to His Excellency upon all seasonable occasions, and that their proceedings, as well as your words and actions, will constantly receive from him the most favourable construction."

(2) This assertion of the Commons' privileges holds good for the full term of a Parliament and need not be repeated by a Speaker who is elected during the course of a Parliament. He then omits from his statement all the words after the phrase "whose servant I am".

**32.** (1) In England, the Speaker is elected by the House by Command of the King. When the Members of the Commons go up to the House of Peers on receiving the Message delivered by Black Rod, they are told that "it being necessary a Speaker of the House of Commons should be first chosen, you, gentlemen of the House of Commons, repair to the place where you are to sit, and there proceed to the appointment of some proper person to be your Speaker; and that you present such person whom you shall so choose, here, to-morrow (at an hour stated), for His Majesty's royal approbation."

(2) Campion says that "The direction of the Crown to appoint a Speaker has, since 1400, been regarded as an indispensable step in the appointment of a Speaker." This does not affect the Members of the Commons' privilege to choose their presiding officer, but it means that they should not do so until they have a direction from the King. In Canada, after a general election, the Lower House is empowered to appoint its Speaker by Section 44 of The British North America Act, which says: "The House of Commons, on its first assembling after a general election, shall proceed with all practical speed to elect one of its members to be Speaker." The Governor-General does not give any orders to the Members of the Commons, neither does he tell them to present their Speaker to him for approbation.

He simply says, through the medium of the Speaker of the Senate, that he "does not see fit to declare the causes of his summoning the present Parliament of Canada until a Speaker of the House of Commons shall have been chosen according to law," that is, he will wait, before reading the Speech, until the members of the Commons, in full possession of their right, shall have made that appointment. In Canada, the Speaker-elect does not submit himself to the Governor General's gracious approbation because, presumably, the obligation to appoint a Speaker, after a general election, being imposed by law, it is not necessary that it should meet with the approval of the Governor General.

(2) The Commons' privileges having been recognized, the Governor General's Secretary hands the Speech to His Excellency who reads it first in English and then in French, doffing his hat when he addresses the Senate or House of Commons whose Speakers return the salutation. The Clerk and the Assistant Clerks of the Lower House, standing on the Speaker's left, also wear their official hats on this occasion, but they do not salute.

**33.** When the House returns from the Senate, the Speaker first announces the vacancies in the membership and the election of new members at bye-elections prior to his appointment. Then the Prime Minister, before His Excellency's speech is reported by the Speaker, introduces a Bill *pro forma*, intituled "An Act respecting Oaths of Office" which receives its first reading and is not ordered for second reading. It will not be proceeded with any further for it is only introduced to assert the House of Commons' right of passing legislation and deliberating without reference to the causes of summons expressed in the Governor General's speech. This is an ancient practice which dates from 1571 and was confirmed in 1603 by the resolution "That the first day of every sitting, in every parliament, some one bill, and no more, receiveth a first reading for form's sake."

**34.** The introduction of a *pro forma* bill in each House at the commencement of every session is the perpetuation of the claim of Parliament to sit and act without leave from the Crown. The practice became a Standing Order of the British House on the 22nd March, 1603, when the rule was passed: "That the first day of every sitting in every Parliament, some one bill, and no more, receiveth a first reading for form's sake." In the Canadian Parliament, since Confederation, the one bill

in the Commons has been a bill respecting oaths of office; and in the Senate, a bill respecting railways (not to amend the Railway Act). The reason for this rule is very plain. Under the old Witan, the King was elective, and the right of succession did not rest with him. The Witan, it will be remembered, elected the King. After the Conquest, the great council of the nation became subservient to the King, but as the Saxon and Norman races blended, the desire for freer parliamentary action grew. After Magna Charta, this growth received an impulse, but Edward III seriously infringed on the freedom of Parliament. The encroachments continued, becoming greater and greater till, under the Tudors, a conflict between the Crown and the Legislature often seemed imminent. Green, in his "History of the English People," Book VI, Chap. 7, under the caption, "The Reformation, 1540-1603", gives a very concise and interesting sketch of the troubles and the extent to which they grew under Elizabeth until, on the 22nd of March, 1603, two days before her death, the Parliament formed this *assertion of independence of the Crown for legislative purposes*. The practice has been maintained ever since.

**35.** At the first sitting of the session of 1937, the Prime Minister did not introduce a *pro forma* Bill respecting the Administration of Oaths of Office. He introduced Bill No. 1, "An Act respecting alteration in the law touching the succession to the Throne," which was read the first time, and ordered for second reading at the next sitting of the House. In the session of 1926, no bill was introduced prior to the motion for the debate on the Address, for as soon as the newly-elected Speaker reported that the House had been in the Senate Chamber and that he had made the usual claim of privileges which His Excellency had been pleased to confirm, the leader of the House moved: "That in the opinion of this House, in view of the recent general elections, the Government was justified in retaining office and in summoning Parliament; and the Government is entitled to retain office unless defeated by a vote of this House equivalent to a vote of want of confidence." Debate was adjourned on this motion and it never was resumed. The Address in reply to the Governor's Speech was moved on the next day and the session went on with its work. As long as a majority, however small, supported the Government, there was no necessity to divide the House on that motion.

**36.** The Speaker continues in office during the whole Parliament, unless in the meantime he resigns, is dismissed by resolution of the House or is removed by death. If the vacancy in the Chair is caused by the Speaker's acceptance of office, protracted illness or death, the Clerk, at the ensuing meeting of the House, announces the death of the Speaker or reads a letter which the Speaker, stating the cause of his retirement, has addressed to the Clerk. Immediately after the announcement has been made, the mace is brought into the House and laid under the Table. A member then rises and moves the adjournment of the House, addressing the Clerk, who puts the question "by direction of the House". The Speaker, on other occasions, informs the House of the cause that compels his retirement from the Chair. (M. 156-7.)

**37.** (1) The Speaker may resign in two ways. He may read from the Chair a statement tendering his resignation to be effective either immediately or at some future date, or he may write a letter to the Clerk of the House who will read it at the next meeting the same way as he notifies the House when the Speaker is unavoidably absent. On January 15th, 1935, Mr. George Black handed his resignation to the Clerk but it was addressed to the Prime Minister, Mr. Bennett, to whom it was immediately delivered. When the House met two days later, for the sixth session of the seventeenth Parliament, Mr. Bennett read the letter which was as follows: "Sir, I find it necessary to ask the House of Commons to allow me to retire from the Chair. In laying down the great office to which the House of Commons has called me, I trust that I can hand down its traditions unimpaired. If I have been able to discharge my official duties with any degree of success, it is because I have received the help and support of all my colleagues, for which I desire to express my sincere thanks." The Usher of the Black Rod then delivered the Governor General's message and members of the House proceeded to the Senate where they were informed that His Excellency did not see fit to declare the causes of summons until they appointed their Speaker. They returned to the House, and, the Prime Minister, addressing the Clerk, moved that Mr. Bowman do take the Chair of this House as Speaker.

(2) During the 1956 session of the Parliament of Canada, the Speaker of the House of Commons, against whom a motion

of want of confidence had previously been made and lost, said from the Chair:

"I am anxious to regain my full freedom of speech. Were I to resign to-day the House would have to adjourn immediately. The Senate being adjourned for three weeks, it would have to be called back in session and the presence of His Excellency the Governor General or his deputy would be required for the approval of a new Speaker." Had the Speaker stopped there, his statement could have been construed as a declaration of his intention to resign. But he added words tantamount to an actual resignation. He said: "I place my resignation before the House to take effect at the pleasure of the House. I would wish that it be accepted as soon as possible. This is my farewell speech. I shall always remember with pleasure my term of office as Speaker. . . . Now I thank you very much for the privilege and the honour that you have given me of serving you as Speaker of the House." This statement was not followed by any resolution and no objection was taken to the Speaker continuing to perform his official duties. The Prime Minister stated that the Speaker had only declared his intention to resign but the Prime Minister's opinion is not a decision of the House which can only be arrived at by a division or unanimous consent. The Speaker then remained silent; his announcement was neither confirmed nor withdrawn and the House took no action. If it considered that he had resigned it could have proceeded immediately to elect his successor, which, in Canada, can be done without the assent of the Governor General, section 45 of the British North America Act making no mention of His Excellency's co-operation in the matter. The Speaker's statement was an ambiguous method of resigning which the House completely ignored.

**38.** (1) In the Assembly of Nova Scotia in 1875, a resolution was adopted by a vote of 20 to 12 requesting Mr. Speaker Dickie to resign. Nothing was alleged against Mr. Dickie's moral character, but his conduct of the office showed that he had not the requisite qualifications to satisfactorily discharge its duties. Upon the passage of the resolution the Speaker resigned and another was elected.

(2) In only two instances has the English House been called on to express its opinion as to the continuance of a Speaker in the Chair. Objections were made to the conduct of Sir E.



Seymour, in 1673, but a motion for his removal was rejected. In the memorable case of Sir John Trevor, in 1694, a committee showed that he had received a bribe to promote the passage of a certain bill, and the House resolved that he had been guilty of a high crime and misdemeanour. Thereupon he resigned, and the King immediately gave leave to the House to proceed to the election of a new Speaker. Sir John Trevor was then formally expelled. B. 177.

(3) In the event of a vacancy in the Speakership during the session, the Governor General's desire that the House proceed to the appointment of a Speaker is not signified by the Speaker of the Senate in the Senate Chamber (which happens when a new Speaker is to be chosen after a general election) but a minister of the Crown, in the Commons, acquaints the House that His Excellency gives leave to the House to proceed forthwith to the choice of a new Speaker. If the vacancy occurs in the recess, the same procedure is followed as on the first session of a new Parliament.

This procedure, which is one of the remnants of ancient practice followed when the Governor General's Instructions gave him a hand in the administration of public affairs, has no other value than that of a gesture of respect for His Excellency. It is courteous but not necessary. Section 45 of the British North America Act says: "In case of a vacancy happening in the Office of the Speaker by Death, Resignation or otherwise, the House of Commons shall with all practical speed proceed to elect another of its members to be Speaker." It seems clear that the House, being compelled by law to fill a vacancy in the Speakership, does not need the Governor General's permission to perform that duty.

(4) The Speaker's resignation is addressed to the Clerk for the purpose of having it officially communicated to the House which has to appoint his successor. There is no precedent to show that the House's acceptance is necessary. Once the letter of resignation is signed it is effective and after the House has been officially apprised of it, it cannot be withdrawn. If it were desirable that he should remain in office he would have to be re-appointed in the same way as when he was first appointed to the Speakership.

**39.** (1) On August 1st, 1899, after the Speaker's death during the session, the members did not go up to the Senate, but

when they met at three o'clock, Sir Wilfred Laurier immediately took the floor and said: "The Governor General, having been informed of the death of Sir James Edgar, is pleased to give leave to the House to proceed to the choice of a Speaker." Strictly speaking, the information regarding the Speaker's death should be given the members by the Clerk of the House, but no objection was raised, and the Prime Minister addressing the Clerk, then moved: "That Mr. Bain do take the chair of the House as Speaker." The motion was carried unanimously.

(2) On February 8th, 1878, there was no Speaker when the members assembled for the fifth session of the Third Parliament, Mr. Anglin having resigned during the recess. The Usher of the Black Rod delivered to the Commons the usual message demanding the members' attendance in the Senate Chamber. They obeyed and were told in the Upper House that the causes of summoning Parliament would not be declared until they chose a Speaker. This they did at once.

(3) On March 10th, 1904, when the members assembled for the fourth session of the Ninth Parliament and were without a Speaker, the same procedure was followed as on February 8th, 1878, i.e., the procession to the Senate took place prior to the Speaker's election. The same practice was observed on January 12th, 1916, when Parliament opened for the sixth session of the Twelfth Parliament and Mr. Sévigny was elected Speaker in the place of Dr. Sproule who had resigned through ill-health, and, on January 17th, 1935, when Mr. Black withdrew from the Speakership and was replaced by Mr. Bowman.

**40.** The Speaker is often addressed in the House as "Your Honour", but there is no written authority for such a title. At Westminster, he is addressed as "Sir". The theory is that the Speaker is not a magistrate sitting in court over the members of the House. He is one of their colleagues whom they have chosen to be their official spokesman, to preside at their sittings and give decisions on points of order. He is not their superior. There should not be any feeling of subservience when they address him and he ought not to act as if he were their master. *Primus inter pares* is a good description of his status with regard to the members, and the proper way to address him is "Mr. Speaker" or "Sir". In the course of a discussion on points of order, a member will not be disrespectful if he says: "I wish, Sir, to draw your attention to a certain decision." Although

the Speaker holds an office of great dignity, he is the servant of the House.

**41.** In the United Kingdom, where the Speaker is usually three or four times reappointed, and severs all political connections after his appointment, it was felt in some quarters that his electors were practically disfranchised from a party point of view, by having as its member the Speaker who stands completely outside party politics. On the 19th December, 1938, the House passed the following resolution: "That a Select Committee be appointed to consider what steps, if any, should be taken to ensure that, having due regard to the constitutional rights of the electors, the Speaker, during his continuance of office, shall not be required to take part in a contested parliamentary election." Mr. Lloyd George was elected Chairman of the committee, which did not agree to the resolution, but reported that to attempt to deprive a constituency of the right to choose as its member one who is considered most representative of the popular will, would be a serious infringement of democratic principles. To alter the status of the Speaker so that he ceased to be returned to the House of Commons by the same electoral methods as other members or as a representative of a parliamentary constituency, would be equally repugnant to the custom and tradition of the House. To advocate that a Speaker should modify, even in his own defence, the established attitude towards political controversy, would be to reverse the whole trend of our parliamentary evolution.

**42.** A session of Parliament is only opened by the reading of the Speech from the Throne. When the members of the House of Commons, in compliance with a Proclamation, meet in the Chamber, on an appointed day, prior to going to the Senate where the "causes of summons" will be imparted by the Governor General, they are not "in Parliament Assembled". The point was raised in 1873, and Speaker Cockburn, in giving his decision, made the following statement:

"The first day of a session of Parliament is that day on which the Sovereign opens Parliament with a Speech giving the causes for summoning Parliament. Parliament is composed of three distinct branches, the Queen, the Senate and the House of Commons. It is true that on the 5th of March this year, the members of the House of Commons went individually to the Senate Chamber, and were there informed by His Excellency,

or by the Speaker of the Senate for His Excellency, that it was their duty to elect a Speaker. That was not an assembling of Parliament, the three branches of Parliament were not there; the House of Commons as a House of Commons was not there; the Mace, the symbol of its authority, was not there; the Speaker was not there. It is said that the House of Commons has no eye, no ear, nor mouth without a Speaker. It had no ear to hear the Speech of His Excellency, no voice to ask that its ancient privileges be maintained; consequently, it was only there as a collection of individuals. The Commons then returned to this Chamber by command of His Excellency to elect their Speaker. They could do nothing more. It is clear from the authorities that they had no power to do anything else, because their powers were derived from the mandate of the Governor General and that was confined to the one subject to elect a Speaker, and then incidentally to this, to adjourn immediately afterwards. English precedents show that it is not open to the House of Commons to transact any other business whatever, after the election of the Speaker, except to immediately adjourn. The first day, the fifth of March, was not therefore the day of the assembling of Parliament. It was not until the sixth of March, that Parliament was formally opened by the Speech from the Throne.

“All the authorities go to show that the Parliament is only opened when the three States of the Realm are met together, and is not supposed to be seized of any public business until the Speech from the Throne is delivered.”

**43.** The following Order of Business is followed on the first day of the session:

1. Prayers.
2. Mr. Speaker communicates letter from Governor General's Secretary *re* opening of Parliament.
3. Gentleman Usher of Black Rod delivers Message. House proceeds to the Senate Chamber. On return from Senate:
4. Mr. Speaker announces notification of Vacancies.
5. Mr. Speaker announces Election of New Members.
6. New Members take their Seats.
7. The Prime Minister moves for leave to introduce a Bill.
8. Mr. Speaker reports Speech of His Excellency.

9. The Prime Minister moves that Speech of His Excellency the Governor General be considered on some future day.
10. The Prime Minister moves for appointment of Special Committee to strike Select Standing Committees.
11. The Prime Minister announces Message from His Excellency respecting the appointment of Commissioners of Internal Economy.
12. Mr. Speaker presents Report of Joint Librarians of Parliament.
13. The Prime Minister moves that X, Esquire, Member for the Election District of XX be appointed Deputy Chairman of Committee of the Whole House.
14. Reference to deceased Members.
15. House adjourns.

**44.** Formerly the House held two or three distinct sittings on the same day and each sitting was considered a full parliamentary day so that Bills could be advanced stages without breaking the rules. There was no necessity for the practice because Standing Order 73, passed in 1867, provides that on urgent or extraordinary occasions, a Bill may be read twice or thrice or advanced two or more stages in one day. The forty-eight hours' notice required under Standing Order 41 for leave to present a Bill, resolution or address or for placing questions on the Order Paper could not be given in a day even with two sittings of the House. It is now customary in the last days of the session to have one prolonged sitting commencing at eleven o'clock, (with intermissions at one and six o'clock), during which resolutions and Bills requiring urgency are taken up by the House.

**45.** The House generally adjourns over certain statutory holidays and festivals, or holidays observed by religious bodies. The following are the holidays as defined by subsection 11, Section 37 of the Interpretation Act (Chapter 1, Revised Statutes of Canada, 1952): Sundays, New Year's Day, the Epiphany, Good Friday, the Ascension, All Saints' Day, Conception Day, Easter Monday, Ash Wednesday, Christmas Day, the birthday or the day fixed by proclamation for the celebration of the birthday of the reigning sovereign, Victoria Day, Dominion Day, the first Monday in September, designated Labour Day, Armistice Day, and any day appointed by proclamation for a general fast or thanksgiving. Accordingly, the House has, as

a rule, adjourned over these days during the session. It is the practice to make the following motion in case of a proposed adjournment, "That when this House adjourns this day, it stand adjourned until ..... next."

**46.** The House may at any time hold a secret sitting; but when it desires to do so, it passes a resolution for which it gives the forty-eight hours' notice required under Standing Order 41. This procedure was followed during the War, in 1918 and in 1942. On April 15th, 1918, the Prime Minister moved: "That the sitting of Wednesday next, the seventeenth day of April, instant, shall be a secret session until the House shall then otherwise order, and that all strangers be ordered to withdraw during such session; provided, however, that this order shall not affect the privilege enjoyed by members of the Senate of being present at debates in this House."

A similar motion was adopted by the House on February 20th, 1942.

On the appointed day, in 1918, the House met at three o'clock. Debates reporters were not present. The Clerks at the Table and the Sergeant-at-Arms were in attendance. The Speaker read prayers but did not say: "Let the doors be open." He immediately called the House to order and routine proceedings were taken up. A Petition was presented, the Speaker delivered a Message from the Governor General, and the Chairman of the Select Standing Committee on Banking and Commerce presented a report. A motion was then made and adopted for the Speaker to leave the Chair and the House held its secret session in Committee of Supply, after which progress was reported and leave given to sit again "this day". At 5.05 p.m., a Minister moved that "The remainder of this day's sitting be open." This was carried, the doors were opened and the House sat in the usual manner for the rest of the day.

A report of the proceedings was subsequently issued under the authority of the Speaker. (In 1942, the secret session was held on the 24th of February.)

**47.** (1) In the session of 1917-18, the House of Lords agreed to a resolution declaring that the privilege of being present at debates, by long custom accorded by each House of Parliament to the member of the other House, should not be withdrawn on the occasion of a secret sitting, and requesting the House of Commons to make a similar order if it concurred

in this proposal. The House of Commons agreed to the Lords' resolution and amended the Standing Order by adding the proviso excepting peers from its operation. 143 C.J. 85; 172 ib. 250. 302.

This rule conforms with sound parliamentary usage and is properly enforced in Canada. When the Speaker orders strangers to withdraw, he excepts the members of the Senate seated in their own gallery, for they are not strangers to Parliament.

(2) A regulation may be passed prohibiting the publication of statements made in a secret session, but any attempt to censor debate and prevent members from criticising the management of public affairs would be resented as a breach of one of the most valuable privileges of Parliament, namely, freedom of speech.

On the 15th April, 1918, the Canadian Government gave notice of a motion to the effect that the Speaker may prevent the reporting of statements detrimental to the prosecution of the war. The proposed resolution read as follows:

"Resolved, That the Rules of the House be amended by inserting the following rules immediately after Rule 24 (now Rule 12):

"The Speaker of the House of Commons, of his own motion, or upon the report of the Chief Censor, may order that any adverse statement, report or opinion, concerning the cause of the present war, or the motives or purposes for which Canada or the United Kingdom of Great Britain and Ireland, or any of the allied nations, entered upon or prosecutes the same, which may tend to arouse hostile feeling, create unrest, or unsettle or inflame public opinion, or any unfavourable statement, report or opinion concerning the action of Canada, the said United Kingdom, or any allied nation, in prosecuting the war, or any statement, report or opinion, which may tend to weaken or in any way detract from the united effort of the people of Canada of the prosecution of the war, made by any Member or Members of the House of Commons, shall not be included in or shall be deleted from the official report of the Debates of the House of Commons.

The Speaker of the House of Commons may, in cases where he deems it necessary, order that the printing of the official report of the Debates in the House of Commons be suspended for such time as he may fix in order to afford

opportunity for the making by the Chief Censor of a report as provided for in the last-mentioned section, and the determination by the said Speaker as to whether any portion of such report should be excluded or deleted."

This proposed resolution was not moved. It remained on the Order Paper until the 11th of May when it was withdrawn.

The Prime Minister in explaining the withdrawal said: "In view of the advanced stage of the session, it is not the intention to proceed with this motion during the present session. It was intended as a corollary to the Order in Council with regard to censorship which has been laid on the Table of the House."

**48.** In the United Kingdom, the secrecy of the secret sitting was preserved in 1939 by the adoption of the following Regulation under the authority of the Emergency Power (Defence) Act, 1939:

"His Majesty, in pursuance of section one of the Emergency Powers (Defence) Act, 1939, and of all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered that Regulation Three of the Defence (General) Regulations, 1939(a), shall have effect as if at the end thereof there were inserted the following paragraph:—

"If either House of Parliament in pursuance of a resolution passed by that House holds a secret session, it shall not be lawful for any person in any newspaper, periodical, circular or other publication, or in any public speech, to publish any report of, or to purport to describe, the proceedings at that session, except such report or description thereof as may be officially communicated through the Press and Censorship Bureau."

**49.** (1) The Wartime Journals of the House of Commons in the United Kingdom, during World War II, were not published till session 1945-46 when all the proceedings in secret session were disclosed in the Journals. The Journals of the House of Lords were published throughout the war, but entries relating to secret sittings were held over till subsequent issues.

In the years 1940-45, following the recommendation of a special report, (H.C. 130, 1939-40), select committees on National Expenditure were given power, in cases where considerations of national security precluded the publishing of certain recommendations and of the arguments on which they were based, to address secret memoranda to the Prime Minister for the considera-



tion of the war cabinet. But the House ordered that whenever this power was exercised, committees should report the fact as soon as possible to the House. (H.C. 178, pp. 3 and 13, 1939-40; do 126, pp. 2 and 5, 1940-41; H.C. Deb. 1940-41, 374, c. 1501; H.C. 126, p. 2, 1941-42; do 125, p. 2 (1943-44)).

The Speaker has ruled that a secret memorandum of this kind cannot be discussed in secret session since it has not been laid before the House (H.C. Deb. 1943-44, 398, c. 408-411).

(2) Arising from an alleged report of proceedings in the Commons in secret session, judicial action was taken (in the United Kingdom) which led to the trial of a private individual on the charge of contravening a regulation. As it was necessary for the prosecution to prove the resolution of the House for going into a secret session, leave of the House was given to a senior clerk of the Journal Office to attend the court (H.C. Deb. 1943-4, c. 29-34).

(3) On May 5, 1942, in the United Kingdom, a complaint was made in the Commons of breach of privilege by an alleged disclosure by a Member of proceedings in secret session. The matter was debated in secret session. A report issued by the Speaker showed that the matter of the complaint was referred to the Committee of Privileges, on a division. Later, the Committee made a secret report which the House ordered to be printed for the use of Members only; it was further resolved that any Member or any other person who disclosed the contents of the report, proceedings or evidence, except in secret session, would be guilty of a breach of privilege. C.J. 1941-2, 123.

(4) In Ottawa the following Regulation was passed prior to the secret session of the 24th February, 1942:

"Whereas in the event of a secret session of the Senate or House of Commons being held it will be necessary to make provision for the preservation of the secrecy of such session.

"Now, therefore, His Excellency the Governor General in Council, on the recommendation of the Minister of Justice, and under the authority of the War Measures Act, Chapter 206, Revised Statutes of Canada, 1927, is pleased to amend the Defence of Canada Regulations (Consolidation) 1941, and they are hereby amended by inserting immediately after Regulation 39A the following:—

"39AA. If the Senate or House of Commons, in pursuance of a resolution, holds a secret session, no person shall in any newspaper, periodical, circular or other publication, or

in any public speech, publish any report or description of the proceedings at that session, except such report or description thereof as may be officially communicated through the Speaker of the House."

**50.** The House may, in order to complete its business, sit on Sunday or any Church holiday because it is not subject to any rule or obligation in the performance of its high duties. On the 18th May, 1794, at Westminster, the debate on the Bill for securing suspected persons was not concluded until nearly three o'clock on Sunday morning. The Reform Bill was read a second time by the Commons on Sunday morning, the 18th December, 1831; and on some later occasions the House has continued its sittings until Sunday morning. (134 C.J., 322, 135 Ib. 273; 138 Ib. 471.) M. 182.

The Canadian House of Commons continued its sitting until Sunday morning on the 9th of November, 1919.

**51.** No notice is required for a motion relating to "the times of meeting or adjournment of the House." (S. O. 45). The word "times" is translated by "heures" in the French version of S. O. 41. It seems therefore that if a motion does not relate to the hour but to the day on which the House is to sit, a notice must be given. See decision given by Speaker Rhodes on May 21st, 1920.

When the House intends to sit later than 6 o'clock on Wednesday or Friday, or later than 10 o'clock on other days, a motion may be made during the sitting, and without notice having been previously given, "that the House do not adjourn at 6 (or 10) o'clock to-day." The reason why no notice is required is that Standing Order 41 which provides for notices to be given says that the rule shall not apply "to the times of meeting or adjournment of the House".

**52.** The Sovereign occasionally witnessed the debates of the House of Lords but since the accession of George I this practice has been discontinued. The king never was present at any sitting of the House of Commons. When Lord Dufferin was governor general of Canada he endeavoured to attend the sittings of the House. On the 20th September, 1873, he wrote Sir John A. Macdonald, "you have promised to arrange for some little closet for me in the House of Commons from whence I could hear what was going on." Sir John answered: "Fletcher (the Governor General's Secretary), spoke to me about the 'cage' in the House of Commons about the time your note arrived. . . . I doubt the

prudence of your being *known* to be present at any time of the exciting debates that we may expect at the beginning of the session. . . . The burthen of their (the Opposition's) speeches will be that the Crown cannot know or ought not to know what passed in the House of Commons; that such knowledge is a breach of their privileges. Now if this is said in the presence of the representative of the Crown—actually at the moment taking cognizance of the proceedings,—the temptation to allude to such presence as a continuation of the breach will be irresistible. One cannot foresee what form the allusion may take. It may be a mere notice that there are strangers in the gallery; it may be a direct objection to your presence as unconstitutional, or it may take the form of an insulting remark. . . . I do not suppose the Opposition leaders would use any unsavoury phrases, but there are several truculent blackguards in the House—annexationists and the like—who would like nothing better than the chance of snubbing the Sovereign. . . . I would advise you to forego the advantage which the hearing of a debate would certainly be to you.” Lord Dufferin appreciated the force of those objections and wrote that he left the matter entirely to Sir John's better judgment. No further action was taken.

**53.** Opinions are divided as to whether or not the House of Commons is a Court of Record. In former times, the United Kingdom House and Colonial Legislative Assemblies had no doubt about it. They sentenced many a man for offences which could very well have been tried in ordinary Courts. A better conception of Parliament's real function in the life of the nation seems now to prevail.

Blackstone gives the following definition of a Court of Record:

“For the more speedy, universal, and impartial administration of justice between subject and subject, the law hath appointed a prodigious variety of courts, some with a more limited, others with a more extensive jurisdiction; some constituted to inquire only, others to hear and determine in the first instance, others upon appeal and by way of review. All these in their turns will be taken notice of in their respective places: and I shall therefore here only mention one distinction, that runs throughout them all; viz.: that some of them are courts of record, others not of record. A court of record is that, where the acts and judicial proceedings are enrolled in parchment for a perpetual memorial and testimony: which rolls are called the records

of the court, and are of such high and supereminent authority, that their truth is not to be called in question. For it is a settled rule and maxim that nothing shall be averred against a record, nor shall any plea, or even proof, be admitted to the contrary. And if the existence of a record be denied, it shall be tried by nothing but itself: that is, upon bare inspection whether there be any such record or no; else there would be no end of disputes. But, if there appear any mistake of the clerk in making up such record, the court will direct him to amend it. All courts of record, are the king's courts, in right of his crown and royal dignity, and therefore no other court hath authority to fine or imprison; so that the very erection of a new jurisdiction with the power of fine or imprisonment makes it instantly a court of record. A court not of record is the court of a private man; whom the law will not intrust with any discretionary power over the fortune or liberty of his fellow-subjects. Such are the courts-baron incident to every manor, and other inferior jurisdictions: where the proceedings are not enrolled or recorded; but as well their existence as the truth of the matters therein contained shall, if disputed, be tried and determined by a jury. These courts can hold no plea of matters cognizable by the common law, unless under the value of 40s., nor of any forcible injury whatsoever, not having any process to arrest the person of the defendant."

**54.** Although the House of Commons may not be a court of record, yet it possesses the inherent power to inflict penalties upon its own members for interference with the performance of its official duties. Imprisonment, expulsion, suspension, reprimand or admonition are the disciplinary measures the House may apply. It is competent to do so as one of the three constituent elements of Parliament—the other two being the Crown and the Senate—because the elected legislators must be untrammelled in the exercise of their important functions, but it cannot go much further than that because, by the establishment of civil and criminal courts, the Houses of Parliament have given up their jurisdiction over offences unconnected with parliamentary proceedings. "Whether the House of Commons be, in law, a court of record, it would be difficult to determine," says May (13th Edition, p. 101): for this claim, once firmly maintained, has latterly been virtually abandoned, although never distinctly renounced. In *Jones vs. Randall* (1 Cowp. 17), Lord Mansfield

said the House of Commons was not a court of record. Numerous cases are to be found in the Journals of the English House during the seventeenth century, of the exercise of a supposed jurisdiction as a court of first instance to try political offences. This practice has been gradually disused and could not now be resumed in any British Parliament. Offenders amenable to the House of Commons are not now really arrested, but they are committed to the custody of the Sergeant-at-Arms or to a prison during the pleasure of the House. A motion may be made that they shall be discharged and then they may be brought to the Bar by the Sergeant-at-Arms with the Mace and be reprimanded by the Speaker. A member, if in custody of the sergeant, is reprimanded at the Bar, but, otherwise, in his place. When the offence has not caused the commitment of the offender, he is generally directed to be admonished, the sergeant, bearing the mace, standing by whilst the admonition is pronounced. Following is an example of an admonition once used by Speaker Peel in the United Kingdom House: "It becomes my duty, as the mouth-piece of the House, and as the interpreter of its wishes, to state to you what is the opinion of the House upon your conduct. The House has directed me to admonish you for a grave breach of its privileges. I would have you know that though the privileges of this House are not to be put into operation upon any light or trivial occasion, and though the intervals are long between the periods when appeals are made to those privileges, yet a privilege of this House is no unreal, shadowy or unsubstantial thing; it is what the House clings to and what it is determined to maintain. The breach of privilege which you have committed is ..... It is a very grave and serious offence that you have committed. The House, in its judgment and, I should say, in its mercy, had decided that I should admonish you. I do most seriously admonish you, and I warn you that any repetition of this offence, for it is an offence, will be visited by this House with its very severe rebuke, reproof and punishment. A great principle has been infringed. I warn you against repeating an offence of this character. I believe I act, as I wish to act, as the interpreter of the feelings of this House when I seriously admonish you, and express the hope that your example will serve as a deterrent to others, and that it will also act as a warning to yourself never again to presume to commit the like offence against the character and the dignity of this House."

**55.**(1) Suspension is a part of procedure which should be resorted to with great caution. It affects a member's freedom, conflicts with the law under which he has been elected to represent a constituency, and there is some disgrace attached to it. It should only be applied as a last resort after all other means have been tried, such as a demand for a satisfactory explanation, a retraction or an apology. If a member, in the heat of debate, is charged by his opponents with laying serious accusations against a colleague, using unparliamentary language or indulging in uncalled for personalities, it is the Speaker's duty to insist on a withdrawal on pain of the member being named and liable to suspension by resolution of the House. The use of improper words may sometimes be a minor breach of order; but it becomes serious if the member refuses to explain or gives an unsatisfactory explanation; he is then amenable to discipline in the form of admonition, suspension or in extreme cases expulsion. The punishment is not meted out to him so much for having used the words as for having deliberately refused to obey an order of the House. Members who do not object to the words used may vote against the member because he does abide by an order of the House.

(2) The rulings of the Speaker or Chairman must always be respected even though the member against whom they are given may find them arbitrary. If he declines to bow-down and does not appeal to the House he inevitably places himself in the position of having infringed upon the rules of parliamentary practice. In committee of the whole, on May 25, 1956, Mr. Fleming, M.P. for Eglinton, rose for the purpose of raising a question of privilege and was not allowed to speak as the Chairman was then on his feet about to give a ruling. Other members were then given the floor and addressed the committee on matters of privilege. Mr. Fleming protested and was ordered to resume his seat, which he refused to do. Thereupon the Chairman left the Chair and made to the House a report to which Mr. Fleming took exception saying he had merely asserted his right to be heard which had been accorded to other members and denied to him. The leader of the House, Mr. Harris, moved that Mr. Fleming be suspended for the remainder of the day's sitting. The motion carried by a vote of 131 to 55.

(3) Suspension from the service of the House is effected by a resolution. The Speaker, in Canada, has no power to impose it. He may name a member for disorderly conduct and then the

Leader of the House is free to move the member's suspension. If it carries, the member cannot thereafter take his seat for the period of his suspension, but he is still a member of the House of Commons, having been duly elected either by acclamation or under the terms of sub-section 3, section 68 of the Dominion Elections Act, 1920, which provides that "the candidate who, on addition of the votes, is found to have a majority of the votes, shall then be declared elected." As a resolution does not override a statute, the House can only unseat a member by introducing a Bill withdrawing him from the operation of the Dominion Elections Act.

(4) On the 24th of March, 1942, Mr. Lacombe was named by the Speaker, in the Canadian House, for persistently interrupting a member and, on motion of the leader of the House, he was suspended until the end of the sitting.

(5) Notices standing in the name of a suspended member are removed from the notice paper of each day as it is made out, as long as his suspension lasts. (90 Parl. Deb. 4s. 1048.)

(6) Is a suspended member entitled to his sessional indemnity? The Senate and House of Commons Act provides that there shall be payable to every member attending at the session, an allowance of four thousand dollars and no more. It seems that suspension from the service of the House extends to the Committees of the Whole, Supply and Ways and Means, as well as Standing and Special Committees. As Committees are the continuation of the House, it is logical that suspension should debar a member from attending a Committee whose work forms part of the service of the House. It is safe to say that, for the purpose of indemnity, days of suspension are days of absence, and deduction ought to be made accordingly from the allowance.

(7) Under Standing Order 22 of the United Kingdom House, a suspended member is allowed to serve on any Committee for the consideration of a private bill to which he may have been appointed before his suspension.

**56.** (1) The right to expel a member is inherent in any legislative body that has the power to regulate its own constitution. It is now reserved to cases of members guilty of misdemeanours whose seats are not, as in the cases coming under section 1034 of the Criminal Code, automatically vacated. This right is inalienable and it even overrides the section of the Dominion Elections Act which provides that "the candidate who on the addition of

votes is found to have a majority of the votes shall then be declared elected." The powers of the House of Commons cannot be taken away by implication or by general terms in any statute but only by the express word of the law. If a Bill were introduced so as to make this provision inoperative, it would have to be taken up by the Senate which may or may not amend or reject it; and the Governors General may in certain circumstances refuse to give it Royal Assent. The upshot would be that the House of Commons could not rid itself of persons unfit for its membership without the permission of the other two constituent parts of Parliament—the Upper House and the Crown. In Great Britain where members are elected under the terms of an Election Act, expulsion has been pronounced in cases of forgery, perjury, fraud, breaches of trust, misappropriation of public money, conspiracy to defraud, corruption in public offices or in the execution of their duties as members of the House and of conduct unbecoming the character of a gentleman.

(2) Section 1034 of the Criminal Code is a copy of section 2 of the United Kingdom Forfeiture Act, 1870. It was not included in the laws of Canada until 1892 when it was passed by our Parliament as section 961, ch. 29, 55-56 Victoria. It provides that any person convicted of treason or any indictable offence for which he is sentenced to death or imprisonment for a term exceeding five years is incapable from the day of his condemnation of sitting or voting as a member of either House of Parliament, and it adds that the setting aside of the conviction by competent authority shall remove the disability by this section imposed. A member convicted under this statute loses his seat in the House by force of law. There is no necessity of expelling him. In such a case, the House may pass a resolution in the following terms:

"That ..... Member for ..... having been adjudged guilty of (treason or an indictable offence) and sentenced to (six years imprisonment) and not having served the punishment to which he was adjudged, has become and continues incapable of sitting in this House, it is ordered that Mr. Speaker do issue his warrant to the Chief Electoral Officer to make out a new Writ for the election of a new member to serve in the present Parliament for the County of ..... in the room of said ..... adjudged and sentenced as aforesaid."

This resolution is necessary because there is not in the House of Commons Act any provision empowering the Speaker to issue his Warrant for a Writ in cases of treason or indictable



offence punishable by death or imprisonment for a term exceeding five years. (See case of Fred Rose, 30 Jan. 1947.)

**57.** The case of a member of the House of Commons found guilty of treason or any indictable offence for which he is sentenced to death or imprisonment for a term exceeding five years is dealt with in section 1034 of the Criminal Code which reads as follows:

"1. If any person hereafter convicted of treason or any indictable offence for which he is sentenced to death or imprisonment for a term exceeding five years, holds at the time of such conviction any office under the Crown or other public employment, or is entitled to any pension or superannuation allowance payable by the public, or out of any public fund, such office or employment shall forthwith become vacant, and such pension or superannuation allowance or emolument shall forthwith determine and cease to be payable, unless such person receives a free pardon from His Majesty within two months after such conviction, or before the filling up of such office or employment, if given at a later period.

"2. Every such person sentenced to imprisonment as aforesaid or on whom sentence of death has been passed which has been commuted to imprisonment, shall become and, until he undergoes the imprisonment aforesaid or suffers such other punishment as by competent authority is substituted for the same, or receives a free pardon from His Majesty, shall continue incapable of holding any office under the Crown, or other public employment, or of being elected, or sitting or voting as a member of either House of Parliament, or of exercising any right of suffrage or other parliamentary or municipal suffrage.

"3. The setting aside of a conviction by competent authority shall remove the disability by this section imposed."

**58.** (1) A member may be expelled from the House when found guilty of libels and other offences committed against the House itself.

Expulsion is generally consequential upon a sentence pronounced on a member by a court of law for a crime committed by him. It expresses the feeling that the member's conduct, whether actually bringing him within the meshes of the criminal law or not, is such as to destroy his fitness for membership in the House of Commons. The sentence of expulsion is based on the record of conviction laid on the table or on the report of a

committee. If a member violates the Oath of Allegiance taken by him after his election, he is liable to expulsion.

(2) There are many instances of expulsion from Canadian Legislatures and the Dominion Parliament. In 1880, C. B. Bouc was expelled for having been found guilty of a conspiracy with other persons fraudulently to obtain money of one E. Dorion; in 1892, M. Christie, for having made false reports to the governor in order to procure the dismissal of certain magistrates; in 1831, W. Lyon Mackenzie, for libels calculated to bring the House and Government into contempt; in 1858, John O'Farrell, for fraud and violence at the election of Lotbinière; in 1874, Louis Riel, as a fugitive from justice. In 1891, Thomas McGreevy was expelled after concurrence in a report of the committee on privileges and elections for having been adjudged guilty by the House of certain offences in connection with contracts for public works. On January 30th, 1947, Fred Rose, convicted of treason, was expelled by resolution of the House.

**59.** "But notwithstanding their extensive jurisdiction in regard to elections, the Commons have no control over the eligibility of candidates, except in the administration of the laws which define their qualifications. No power exercised by the Commons is more undoubted than that of expelling a member from the House, as a punishment for grave offences; yet expulsion, though it vacates the seat of a member, and a new writ is immediately issued, does not create any disability to serve again in Parliament." M. 66.

**60.** (1) Any member may direct the Speaker's attention to the fact that there is not a quorum present. The Speaker will proceed at once to count the House, and if there are not twenty members present, including himself, the Clerk will take down the names, and the Speaker will then adjourn the House without question first put until the usual hour on the next sitting day.

The only occasion when the Speaker takes the initiative in this matter is at three o'clock, before prayers or at eight o'clock, after the intermission. If he does not then see a quorum in the Chamber, he refrains from calling the members to order and asks the Clerk to count the House. If there are not twenty members present, he declares, without question put, that the House stands adjourned until the next sitting day. This procedure must be duly recorded in the Votes and Proceedings.

While the House is being counted the doors remain open and members can come in during the whole time occupied by the counting. B., 218.

An honourable member need not remain in the House after giving notice that a quorum is not present. E. Hans. 3, Vol. 188, p. 56, June 18, 1867.

(2) If notice is taken by a member that there is not a quorum present in Committee of the Whole, the Chairman follows the course pursued by the Speaker in the House. If he ascertains that twenty members are not present, he leaves the Chair, the House is resumed, and, on his report, the Speaker counts the House, and if there is not then a quorum, he must adjourn the House forthwith. B., 218, M. 224. Man. 98, 99.

When the Committees of the Whole, Supply or Ways and Means are compelled to rise for want of a quorum, they neither report progress nor ask leave to sit again. A motion must be made to set them up again. If Supply resolutions have been passed in the Committee when there is not a quorum and are not reported afterwards on account of the lack of quorum, the Chairman must ask at the next meeting of the Committee if he shall report them. His question should be: "Shall I report resolutions Nos. .... passed at the last meeting of the Committee?" If objection is taken, the discussion must bear on the reasons why the report should not be made and not on the merit of the resolutions, because that was decided at the time they were passed. The Chairman's question is merely a matter of form in order to make the proceedings regular and it should be immediately answered in the affirmative.

(3) If, after a division, it appears that the aggregate of the votes on each side, with the Speaker and the members present who did not vote, do not make up a quorum, the question remains undecided and the House will have to be adjourned. The British North America Act says that the presence of at least twenty of the Members of the House of Commons, including the Speaker, shall be necessary to constitute a meeting of the House for the exercise of its powers. (Sec. 48.)

(4) A "count out" will always supersede any question that is before the House, and if an order of the day for supply, or for the reading or committal of a bill, be under consideration at the time, and there is no quorum present, the House must be asked at a subsequent sitting to revive the question that may have lapsed in this way. B., 218.

(5) A message from the Sovereign or the Lord's Commissioners for the attendance of the House in the House of Peers, as, for example for the purpose of giving royal assent to bills, makes a House without regard to the number present. Accordingly, when it is known that the attendance of the House in the House of Peers will be desired, the House meets at the time appointed, and if forty members are not present, the Speaker takes the chair of the Clerk of the House; and when the knock of Black Rod upon the outer door of the House is heard, the Speaker, although forty members are not present, takes the Chair, receives the message delivered by Black Rod, and passes onward to the House of Peers. On his return, the Speaker resumes the Chair, makes his report to the House; and, as the House has been made, business may be proceeded with, until, on notice taken, it is proved that forty members are not present. M. 225.

(6) A "count out" does not often take place, as the absence of a quorum is usually the result of some accident or misunderstanding, particularly when committees have leave to sit while the House is sitting and, on Friday evening, when several members who were present in the afternoon, have left for their homes in the neighbourhood of Ottawa.

There are always enough members in the building to counteract the absence of a quorum at any time. In England, the Speaker has declined to count the House again, when he had recently satisfied himself regarding the presence of a quorum; nor would he count the House after a question had been put from the Chair as the division will prove the number of members present. (See May, p. 224.)

**61.** Messages brought in by the Gentleman Usher of the Black Rod should be received by the House in silence and uncovered, but members do not stand on such occasions.

If messages are signed by the Governor-General's own hand and read by the Speaker or Clerk, in both languages, they are heard by members standing and uncovered.

If the House is sitting in Committee of the Whole on the arrival of the Gentleman Usher of the Black Rod, the Chairman leaves the table and the Speaker takes the chair. If the message commands or desires the immediate attendance of the House in the Senate, it will be obeyed, and on the return of the members, the Speaker will announce the proceedings which took place in the Senate, and then he will leave the Chair and

the Committee of the Whole will resume at the point where the interruption had occurred.

**62.** The announcement of the Usher of the Black Rod's arrival may interrupt the business of the House, in order to allow the members to proceed to the Senate when prorogation is to take place. This procedure infringes to a certain extent on the privilege of the House to sit as long as it likes. In 1922, Mr. Lansbury brought the matter up at Westminster. He asserted the right of the House to decide for itself whether it should or should not be adjourned and so preserve its liberties to meet and debate public questions without interference from the Crown or from any outside body. He thought that all members had the right, collectively and individually, to say whether they agreed to the House being prorogued or not. The Speaker said that the summoning and prorogation of Parliament were matters for the Crown and that it was not constitutional that the King, instead of being advised by his ministers, should be advised by the minority on this or any other matter.

**63.** When the debate on a question is closed, and the House is ready to decide thereon, the Speaker says: "Is the House ready for the question?" If it is evident that no member claims the right of speaking, the Speaker proceeds to put the question by reading the main motion, and then the amendment or amendments in their order as the case may be. He then takes the sense of members by saying: "Those who are in favour of the question (or amendment) will say 'yea,' contrary, 'nay'." When the supporters and opponents of the question have given their voices for or against the same, the Speaker will say: "In my opinion the yeas (or nays) have it," or "I cannot decide." If at least five members then rise, the Speaker says: "Call in the members," and the Sergeant-at-Arms immediately sees that all the bells are rung, and that other steps are taken to bring in all the members from the lobbies and adjacent rooms. The Whips gather their co-partisans who may be in the neighbourhood. There is no special time fixed here as in England, where two minutes only are allowed for calling in the members. It generally takes ten or fifteen minutes to get them, the Speaker remaining in the Chair although order is not strictly maintained. The signal for taking the vote is the return of the Sergeant-at-Arms who comes in and announces the performance of his duty by an obeisance to the Speaker who then calls the

House to order, rises and reads the question, adding: "The question is on the amendment, (or main motion)" as the case may be. "Those who are in favour of the motion (or amendment) will please rise." Members starting from the front benches, rise separately, and the Clerk Assistant, standing, calls out their names and the Clerk records their votes on a printed list, repeating each name as he places a mark against it. The members should sit down after they have heard their names distinctly repeated by the Clerk. Members are taken in rows, and the leaders of the Government and Opposition, wherever they sit, are called out first as a matter of courtesy. When all the yeas have voted, the Speaker says: "Those who are opposed to the motion, (or amendment), will please rise," and the votes are recorded as above. When the yeas and nays are taken down and counted, the Clerk rises, bows to the Speaker and declares the votes in both languages, saying: "Yeas, pour . . . ; Nays, contre . . . ;" The Speaker then says: "I declare the motion (or amendment) carried (or lost)," as the case may be. If division took place on an amendment to an amendment, the Speaker will immediately put the question on the first amendment on which another vote may also be taken, and then the House may vote on the main motion. If the first division took place on an amendment when there is no second amendment, the Speaker will immediately put the question on the main motion, if the amendment is negatived, and the House may again divide; but if the amendment is carried, he will put the question on the main motion as amended, and again, a division may follow. The names having been taken down and the numbers declared, the Speaker states the result of the question in the usual parliamentary terms, i.e., "I declare the motion (or amendment) carried (or lost)."

(2) The Speaker must even put a question when it affects himself personally. B. 179.

(3) A division must take place if the Speaker is unable to decide from the members' voices whether a motion is carried or lost. (Can. C.J., Vol. LXV, pp. 407-8.)

**64.** (1) "Putting the Question" means the reading of the motion or amendment from the Chair before the votes are called and recorded. When debate begins on a certain motion, amendments may be made; and a member who was present at the outset may leave the House only to return when Division is about to take place. The motion to be voted upon may

then be different from the one he heard read, but it must be set forth by the Speaker who says: "The Question before the House is as follows," and he reads the motion or amendment, and that is what is called "putting the question." When the Question is put, a member must be in the House or else his vote cannot be recorded.

(2) If a member who has heard the question put should vote inadvertently, contrary to his intention, he cannot be allowed to correct the mistake, but his vote must remain as first recorded. B. 382.

(3) A member who has made a motion is afterwards entitled to vote against it, provided he gives his voice with the "noes" when the question is put from the Chair. M. 280; H.D. 30, 473.

(4) If a member's name is entered incorrectly or is inadvertently left off the list, he can have it rectified should the Clerk read out the names, or on the following day when he notices the error in the printed votes. B. 82.

(5) Whilst a division is proceeding, in Great Britain, a member may speak on a point of order arising out of or during the division, but he must do so "sitting and covered." It seems that such a practice could not be followed in Canada in view of the fact that our Standing Order 28 explicitly provides that every member desiring to speak "is to rise in his place, uncovered." No exception is made for members speaking during a division.

The Speaker, when his attention has been called to a breach of order in the course of a division, has directed that the division should proceed, and has dealt with the matter when the division was completed.

**65.** Although there is no standing order in this regard, either here or in the English Parliament, it is customary in both places for a member who has to be absent to agree with another member that he also shall be absent at the same time. Thus these members are "paired" and a vote is neutralized on each side of the question.

There can be no parliamentary recognition of this practice (pairing), although it has never been expressly condemned; and it is therefore conducted privately by individual members, or arranged by the gentlemen known as the "Whips" who are entrusted by their political parties with the office of collecting their respective forces on a division.

**66.** (1) The interest which disqualifies a member from voting in the House must be immediate and personal, separately belonging to the person whose vote is questioned.

Disallowance of a vote on the score of personal interest is restricted to cases of pecuniary interest and has not been extended to those occasions when the dictates of self-respect and respect due to the House might demand that a member should refrain from taking part in a division. M. 374.

The votes of members on questions of public policy are allowed to pass unchallenged. Public bills are frequently passed relative to railways, building societies, insurance companies and salaries to ministers in which members have an indirect interest, but their votes, when questioned, have been allowed.

(2) A member's right to vote on a question in which he is personally interested is one of those matters that must be decided by the House and not by the Speaker. Can. Deb. July 10, 1900.

An objection to a vote on the ground of personal interest must be taken by a substantive motion that the vote given be disallowed, and cannot be raised as a point of order. M. 373.

The member whose vote is questioned, having been heard in his place should withdraw before the question has been proposed. M. 373.

An objection on the ground of personal interest raised in a Committee of the Whole must be determined by the Committee upon a motion made therein that the vote be disallowed. M. 373.

(3) The principle of the rule which disqualifies an interested member from voting must always have been intended to apply as well to committees as to the House itself. M. 13, p. 373. Committees on opposed private bills should be constituted so as to exclude members locally or personally interested. See M. 374.

A member of a committee on an opposed private bill, or group of bills, will be discharged from further attendance, if it be discovered, after his appointment, that he has a direct pecuniary interest in the bills, or one of them. M. p. 374.

Although a member interested is disqualified from voting, he is not restrained, by any existing rule of the House, from proposing a motion or amendment. M. 374.

**67.** (1) The principle that the majority rules was conceded in Section 49 of Magna Carta which reads: "In all those things



which are appointed to be done by these twenty-five Barons, if it happen that all the twenty-five have been present and have differed in their opinions about anything, or if some of them who had been summoned would not or could not be present, that which the greater part of those who were present shall have provided and decreed shall be held as firm and as valid as if all the twenty-five had agreed in it."

(2) This principle is also enunciated in Section 49 of The British North America Act which reads: "Questions arising in the House of Commons shall be decided by a majority of voices other than that of the Speaker, and when the voices are equal, but not otherwise, the Speaker shall have a vote."

(3) In every country attempts have been made to ensure that there shall be some check on the powers of the majority. Lord Bryce said in "Modern Democracies": "That a majority is always right, i.e. that every decision it arrives at by voting is wise not even the most fervent democrat has ever maintained seeing that popular government consists in the constant effort of a minority to turn itself by methods of persuasion into a majority which will then reverse the action or modify the decisions of the former majority."

Decision by majority is not an absolute and unquestionable principle. "Our constitution, to use Burke's phrase, is something more than a problem in arithmetic." There is no divine right of a mere numerical majority any more than of King's. Majority decision is a measure of convenience essential to the dispatch of business, the result, "of a very particular and special convention, confirmed by long habits of obedience." The idea that a majority, just because it is a majority, is entitled to pass, without full discussion, what legislation it pleases, regardless of the extent of the changes involved or of the intensity of the opposition to them, the idea in fact that majority edicts are the same things as laws, is wholly alien to the spirit of the constitution. Rt. Hon. A. S. Amery, in "Parliament, A Survey."

(4) A minority party may question ministers, may criticize but cannot control in the ordinary case a Government with a reasonable large majority. There can be no control of the Executive where the supporters in Parliament are prepared without question to obey the leaders of their party—through the Whips. All that the minority party—the Opposition—can do without support from members of the majority party is to question, inquire and criticize, but whilst this does not amount

to control it is an important method of checking abuses of power.

With the support of a majority of Members it would be possible for a Cabinet to suspend the sitting of Parliament, have the minority members arrested, withdraw the safeguards of liberty such as *Habeas Corpus* and freedom of speech, and to establish virtually a dictatorship. All this, too, could be done within the law. It is surprising how few members of the general public appreciate how uncontrolled the Cabinet is where it has the support of a loyal majority in Parliament and that "the supremacy of Parliament" in this sense is absolute and subject to no real safeguards of any kind. J. J. Craik Henderson in "Parliament, a Survey".

(5) We may add that the majority of the House of Commons does not always represent the majority of the electors in the country. It often happens that, owing to the redistribution of electoral districts, a party may come out of the general elections with a majority of elected members without having received the majority of the votes given by the electors who went to the polls or whose names are on the electoral lists. That party may form a Cabinet, but the official Opposition together with other anti-ministerial groups, though sitting to the Speaker's left, are the real representatives of the people; and their right to challenge by legitimate means every measure or proceeding sponsored by ministers cannot be disputed. In such cases, when the House divides, members who oppose the Administration may act on behalf of the majority while Government supporters represent the minority of the people of Canada.

**68.** (1) The chief characteristics attaching to the office of the Speaker of the House of Commons are authority and impartiality. The symbol of his authority is the Mace of the House of Commons which is borne before him by the Sergeant-at-Arms when entering or leaving the Chamber and upon state occasions, and is placed upon the Table when he is in the Chair. In debate all speeches are addressed to him. When he rises to preserve order or to give a ruling he must always be heard in silence and no Member may stand when the Speaker is on his feet. Reflections upon the character or actions of the Speaker may be punished as breaches of privilege. His action cannot be criticized incidentally in debate or upon any form of proceeding except a substantive motion. Confidence in the

impartiality of the Speaker is an indispensable condition of the working of procedure, and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized. He takes no part in debate and must be careful not to indulge in any argument with Members on the soundness of his rulings. He votes only when the voices are equal, and then in accordance with rules which preclude an expression of opinion upon the merits of a question. M. 15th ed., p. 235.

(2) The duties of the Speaker of the House of Commons are as various as they are important. He presides over the deliberations of the House, and enforces the observance of all rules for preserving order in its proceedings; he puts every question and declares the determination of the House. As "mouth of the House" he communicates its resolutions to others, conveys its thanks and expresses its censures, its reprimands or its admonitions. He issues warrants to execute the orders of the House for the commitment of offenders, for the issue of writs, for the attendance of witnesses in custody, for the bringing up prisoners in custody, and giving effect to other orders requiring the sanction of a legal form. He is, in fact, the representative of the House itself, in its power, its proceeding and its dignity. . . . The Speaker is responsible for the due enforcement of the rules, rights and privileges of the House, and when he rises he is to be heard in silence. In accordance with his duty, he declines to submit motions to the House, which obviously infringe the rules which govern its proceedings. . . . If the Speaker is made aware that a member proposes to bring forward a motion, or to engage in a proceeding which would infringe the rules and usages of the House, he deals with the matter, if it seems desirable, by conveying to the member an intimation regarding the irregularity of the course which the member proposes to follow. The Speaker, whenever it seems to him the suitable occasion, communicates to the House letters and documents addressed to him as Speaker. He is not obliged to read to the House every such letter and document, but he may at his discretion withhold the same from publication. M. 189, 190, 191.

In case of disorder the jurisdiction of the House is also extended to the lobbies. 132 C.J. 144.

The Speaker's jurisdiction does not extend to words outside the House. M. 337.

(3) The presiding officer, though entitled on all occasions to be treated with the greatest attention and respect by the individual members, because the power, and dignity, and honour of the assembly are officially embodied in his person, is yet but the servant of the House. He is selected and appointed to the trust of presiding officer, in the confidence and upon the supposition of the conformity of his will to that of the assembly. C. No. 294.

(4) The Speaker's duty as the official mouthpiece of the House is extremely well expressed in a few words by Mr. Speaker Lenthall, who, when that ill-advised monarch, Charles I came into House of Commons, and having taken the Speaker's Chair, asked him "whether any of the five members that he came to apprehend were in the House, whether he saw any of them, and where they were?"—made this answer:—"May it please your majesty, I have neither eyes to see, nor tongue to speak, in this place but as the House is pleased to direct me, whose servant I am here, and humbly beg your majesty's pardon that I cannot give any other answer than this, to what your majesty is pleased to demand of me." 2 Hatsell, 242.

**69.** (1) The Speaker exceeds his authority if, without having been specially instructed by the House, he takes upon himself to alter any of his rulings which, once given, are under the exclusive control of the House. There is no precedent to show that the Speaker of the United Kingdom House who is vested with great powers and whose decisions are not subject to appeal has ever reversed his own ruling. We have had a different experience in Canada.

On March 26, 1916, the Speaker ruled that an amendment having been voted in the affirmative, there was no need of putting the question on the main motion as amended. He was told at the next sitting that his ruling was not in conformity with parliamentary practice. Having thus been advised from the floor of the House, he reversed his ruling. In this case, the House took the initiative in the procedure required for correcting an erroneous decision. On February 1, 1912, the Speaker ruled that a motion regarding the placing of telephones in rural post offices was out of order on the principle that it appeared to involve a charge upon the revenue. On the following day he stated that upon more careful and mature consideration he was quite sure the ruling would not be held to be well founded, and

he said it would be in order if the Member who had that motion in charge to move to have it reinstated on the order paper, as otherwise it would be dropped.

(2) Speaker's rulings, once given, belong to the House which under Standing Order 12 is free to reject them. If they are accepted without an appeal or confirmed by an appeal, they become precedents and form part of the rules of procedure. The Speaker is not vested with the power to alter them of his own accord. If they have been given under misrepresentation, the House itself, and not the Speaker, should take the initial steps to avoid the consequences or implications.

(3) Standing Order 12 being restrictive should be given the strictest literal interpretation. It provides that the Speaker shall decide questions of order subject to an appeal to the House "without debate". When a Member has risen and announced that he appeals from a ruling, no argument should be brought forward to influence the vote about to be given by the House. The Speaker, in submitting the appeal, must not adduce precedents in support of his ruling lest he should start a debate.

**70.** (1) Points of order are questions raised with the view of calling attention to any departure from the Standing Orders or the customary modes of proceeding in debate or in the conduct of legislative business, and may be raised at any time by any member, whether he has previously spoken or not. It should be realized that support of the Speaker in the maintenance of order expedites transaction of business; and the conduct of a disorderly member, if unchecked, may result in an ineffective meeting.

If a point of order consists in putting a question to the member speaking, if it is a mere interruption, or if it is defective for other reasons, the Speaker will sharply rule it out. A point of order cannot be raised on a point of order.

(2) Any member is entitled, even bound, to bring to the Speaker's immediate notice any instance of what he considers a breach of order. He may interrupt and lay the point in question concisely before the Speaker. (Redlich.) He should do so as soon as he perceives any irregularity in the proceedings which are engaging the attention of the House. The Speaker's attention must be directed to a breach of order at the proper moment, namely, the moment it occurred. A point of order may be taken after a debate is concluded and the Speaker is about to

put the question to a vote, also, while the House is voting, after the vote has been taken, in fact, at any time, but not so as to interrupt the Speaker when he is addressing the House. Even the provisions in Standing Orders that action must be taken "forthwith" or "forthwith without debate" with respect to certain proceedings do not debar a member from raising a point of order when a serious irregularity occurs.

(3) If the Speaker's attention has been called to a breach of order in the course of a division he has directed that the division should proceed and has dealt with the matter when the division was completed. In doubtful cases and in cases not provided for by practice or the Standing Orders, the Speaker refers the matter to the judgment of the House. It is the Speaker's duty to deal with minor offences, but the power to inflict punishment is left to the House. M. 423.

(4) A point of order against procedure must be raised promptly and before the question has passed to a stage at which the objection would be out of place. (Can. C.J., Vol. XLVI, p. 190.)

(5) When a bill is under consideration, points of order should not be raised on matters which could be disposed of by moving amendments. The same may be said about Instructions which can only be moved if they are within the scope of the bill. It is more advantageous to proceed by amendments on the third reading when, if the House divides, every member's attitude is clearly shown. Points of order are justified when there is some flagrant misuse of the rules, but they are unfortunate necessities which should not be regarded as usual phases of procedure and ought not to develop into long arguments with the Speaker who, being in a quasi-judicial position, should not be drawn into controversial discussions.

(6) The Speaker decides questions of order only when they actually arise and not in anticipation. He is bound to call attention immediately to an irregularity in debate or procedure and not wait for the interposition of a member.

**71.** (1) When a member was putting a question to the Speaker on procedure, the Speaker said: "I must deprecate the practice of putting questions of this kind to the Speaker. It is the Speaker's duty merely to answer questions of order and procedure as they arise." (90 Parl. Deb., 4s., p. 1048.)

(2) The Speaker cannot be consulted from the floor of the House as to the consequences of the passage of a resolution. On the 31st January, 1936, when Empire Trade agreements were before the House, a member said: "What I would like to know before we begin a discussion of this motion is, as to whether, after the motion has been discussed, honourable members will be precluded from a very full discussion of the trade agreements and their effects, when we come to discuss, for example, the question of reciprocity or any other question that may come up in consideration of the budget." The Speaker quoted authorities to show that he decided questions of order only when they actually arose and not in anticipation. He added: "it is generally agreed that it would be impossible for me to give a decision at this time, on a point of order to be raised in the future." (Can. Deb., 1935, p. 354-5.)

(3) Hypothetical queries on procedure cannot be addressed to the Speaker from the floor of the House.

(4) When a member asked Mr. Speaker whether a motion was susceptible of amendment, as proposed, he said: "When the suggested amendment is proposed, I will give a ruling upon it, and unless an immediate decision is required, I shall be glad to consider it." (Com. Deb. 1932, p. 290.)

(5) The Speaker will not give a decision upon a constitutional question nor decide a question of law, though the same may be raised on a point of order or privilege. B. 180, Can. C.J., Vol. 38, p. 577-8.

(6) In all matters of doubt, the Speaker will consider attentively the opinions of members of experience, or sometimes, instead of expressing his opinion on either side, may ask instructions from the House or reserve his decision on the point in discussion, or suggest that the House may, if it think proper, dispense with the rule in a particular case. In doubtful cases, he will be largely guided by circumstances. 1 C.J. 187.

(7) The opinion of the Speaker cannot be sought in the House about any matter arising or likely to arise in a Committee. The Speaker is always ready to advise members of all parties who consult him privately whether upon any action which they propose to take in the House or upon any questions of order which are likely to arise in its proceedings. Such private rulings of the Speaker generally settle the questions at issue, but they may, if necessary, be supplemented by rulings given from the Chair. M. 14th ed., p. 235.



(8) When a member moves that a certain matter be referred to a committee, the leader of the House, or the minister interested may, if he thinks it more convenient, suggest that the reference be to another committee; but it is not within the Speaker's duties to make such a suggestion, and if he does, he plainly goes out of his jurisdiction and encroaches upon the prerogatives of the leader of the House.

(9) The prerogative of mercy under which the Crown is empowered to remit death sentence is a question of constitutional law that the Speaker cannot presume to explain. If this prerogative is alluded to by a member, it may be expounded from the floor of the House either by the Prime Minister, the Minister of Justice or any other member, but the Speaker's duty in the matter is limited to parliamentary procedure.

(10) The Speaker or the Chairman of the Committee of the Whole ought not to consider the consequences of the adoption or rejection of a motion or an amendment, nor is it his concern whether ministers or private members are proceeding fast enough with their bills or resolutions. All he has to do is to see that the rules of procedure are observed. The House will decide what course to follow after the members who sponsor measures have introduced and explained them. Vague motions, if properly worded, cannot be ruled out if they are relevant.

(11) An amendment was ruled out in conformity with a previous decision of the House by which the Speaker was bound. He then pointed out that "the best authority for the Speaker is the judgment of the House. The House having declared out of order an amendment framed precisely as the one now under discussion, I am bound, in accordance with that decision and irrespective of the authorities, to rule the present motion also out of order". C.J. Vol. 64, p. 302.

**72.** (1) The Speaker's actions cannot be criticized incidentally in debate or upon any form of proceeding except a substantive motion. His rulings in the United Kingdom House of Commons are not subject to immediate appeal. In Canada, an easy procedure is established for challenging silently the Speaker's decisions. Our Standing Order 12 provides that he shall decide questions of order subject to an appeal to the House without debate, and in explaining a point of order or practice he shall state the Standing Order or authority applicable to the



case. In the United Kingdom, if there is any serious objection to the ruling or decision, notice may be given that on some future day a vote of censure upon the Speaker will be moved. Such an event happens but rarely, the last time being in 1902 and Mr. Balfour showed that no motion for censuring the Speaker had been brought forward for eighty years and then it was based on a precedent recorded in the year 1777. Redlich says: "To an Englishman it would appear seriously to undermine the exalted position and dignity of the Speaker, if, in addition to his application of the rules being open to challenge upon special and important occasions, it was competent for every member to call in question the Speaker's authority whenever he chose, and if he was liable at all times to be called upon to defend the correctness of his decisions."

(2) In addition to appeals there is also in the Canadian House the English rule that censure upon the Speaker can be moved and debated. This is the only proceeding which permits discussion of the Speaker's rulings. Until it is resorted to, the Speaker must be trusted by the members. "Confidence in the impartiality of the Speaker is an indispensable condition of the working of procedure," says Sir Erskine May, "and many conventions exist which have as their object not only to ensure the impartiality of the Speaker but also to ensure that his impartiality is generally recognized." His prestige would be seriously impaired if he allowed himself to argue with members on the soundness of his decisions.

(3) If a member wishes to challenge the action or conduct of the Speaker on any matter other than an appeal from his decision, he must proceed by giving two days' notice of a motion on the subject and by bringing the matter up as a separate question, except, of course, if it be a question of privilege, when it may be taken up as such.

(4) On June 14, 1956, Mr. Drew, Leader of the Opposition, moved that "In view of the unprecedented action of Mr. Speaker in (a) improperly reversing his own decision without notice and without giving any opportunity for discussion; (b) repeatedly refusing to allow members to address the House on occasions when the rules provide that they have the right to be heard; (c) subordinating the rights of the House to the will of the Government, this House resolves that it no longer has any confidence in its presiding officer." The motion was lost on a vote of 35 to 109.

**73.** (1) Members may sit in their respective places with their heads covered, but when they desire to speak, they must rise and remove their hats. They are not to cross between the chair and a member who is speaking (except if the member speaks from a good distance from the chair), or between the chair and the table, or between the chair and the mace when the mace is taken off the table by the Sergeant. When they cross the House, or otherwise leave their places they should make obeisance to the chair. See M. 334 and B. 332-3.

(2) Members are not allowed to read books, newspapers or letters in their places. This rule, however, must be understood with some limitations; for although it is still irregular to read newspapers, any books and letters may be referred to by members preparing to speak, but ought not to be read for amusement or for business unconnected with the debate. M. 334. 4 C.J. 51.

(3) An order has been passed in the United Kingdom House "That no member do presume to take tobacco in the gallery of the House or at a Committee table."

**74.** (1) Silence is required to be observed in both Houses. In the Commons, all members should be silent, or should converse only in whisper. M. 334.

(2) The galleries of the House are divided into sections called the Speaker's gallery, the senators', the members', the distinguished visitor', the ladies', government officers' and the general gallery. The orders and arrangements with reference to the admission of strangers are carried out by the Sergeant-at-Arms.

(3) There is also the press gallery, which custom has made a permanent institution in the Canadian Parliament. The newspaper correspondents occupy a gallery above the Speaker's Chair, they have headquarters of their own in the House and are supplied with special telegraphic conveniences. They get all the books and documents distributed to members. The official stenographers of the House hand them separate typewritten copies of all the speeches made in the House. They elect a board of officers at the opening of every session and their president acts as their spokesman whenever they have any representations to make. They have free access to the reading room, library and restaurant during the session.

(4) Note that, under Standing Order 13, the Speaker is not given the same power as the Speaker of the English House. The Canadian Speaker cannot, of his own accord, order that the

galleries be cleared. He must put the question: "Shall strangers be ordered to withdraw?" This is not debatable but a division may take place.

(5) If an individual or a group of persons misconduct themselves in the galleries, no special order is necessary to oust them out; it is the Sergeant-at-Arms' duty to eject them or to take them in custody without any specific instructions.

(6) If, after a call to order, members who are standing in the main aisle or gangways do not disperse, the Speaker orders them to take their places, when it becomes the duty of the Sergeant-at-Arms to enforce the order of the Speaker by desiring those members who still obstruct the passage immediately to take their places. If they refuse or neglect to comply, or oppose the Sergeant in the execution of his duty, he may report their names to the Speaker.

**75.** (1) When he has to give a casting vote, the Speaker is at liberty to vote like any other member, according to his conscience, without assigning a reason; but in order to avoid the least imputation upon his partiality, it is usual for him, when practicable, to vote in such a manner as not to make the decision of the House final, and to explain his reasons which are entered in the Journal. He votes in such a manner as to leave the House another opportunity of deciding the question. M., 361.

(2) If, in consequence of the subsequent revision of the votes, or otherwise, it is discovered that there was no occasion for a casting vote, but that the question was decided without it, the vote of the presiding officer is not reckoned with the others on the same side, but disregarded altogether as if it had never been given. C. No. 307.

(3) Upon all occasions when the question is for or against giving to any measure a further opportunity of discussion, the Speaker, in case of an equality of voices, should always vote for the further discussion. See M., p. 361.

(4) When the voices are equal in a Committee of the whole House, the Chairman, who does not otherwise vote, gives his casting vote, and in doing so is guided by the same principles as the Speaker of the House. Thus, the numbers being equal in Committee of Supply, upon the reduction of a vote, the Chairman declared himself with the noes, as the Committee would have an opportunity of voting upon any other reduction of the proposed vote. M., 364.

(5) A special committee appointed during the Session of 1931, to consider jointly with the Speaker the amending of the Standing Orders of the House governing the procedure to be followed in taking a division, made the following report which was concurred in on the 22nd July: "Your Committee have considered several systems of taking divisions and are of the opinion that there does not seem to be any urgent necessity of making radical changes in the procedure now followed in the House of Commons; but they recommend that, in order to save time, one of the officers of the House be assigned to sit near the Clerk and count the votes as they are called during a division, so that the totals of the yeas and nays recorded be given out immediately after the members have voted."

(Journals, House of Commons of Canada, Vol. 69, p. 598.)

**76.** The sovereignty of Parliament means in effect the gradual transfer of power from the Crown to a body which has come more and more to represent the nation. The leaders of the English people in their contests with the royal power never attempted, except in periods of revolutionary violence, to destroy or dissipate the Crown as head of the state. Their policy, was to bind down the action of the Crown to recognized modes of procedure which, if observed, would secure first the supremacy of the law and ultimately the sovereignty of the nation. It was established that the King could act judicially only in and through his Courts; he was recognized as the only legislator but he could enact no valid law except as King in Parliament, he held in his hands all the prerogatives of the executive government, but he could legally exercise those prerogatives only through ministers who were members of his Council and incurred responsibility for his acts. Thus the personal will of the King was gradually identified with and transformed into the lawful and legally expressed will of the Crown. Dicey.

**77.** The deliberations of the cabinet upon all matters which engage their attention are strictly private and confidential; being kept secret even from the other members of the administration, who have no seat in the cabinet, and who therefore are not directly responsible for the conduct of the government. Upon their first introduction into the Privy Council, ministers are invariably sworn to secrecy. Hence they are not at liberty, thenceforth, to divulge conversations or *proceedings* in council—or to reveal to others any confidential communications they may have

had, either with the sovereign or with a colleague in office—without express permission from the Crown. This applies equally to those who have ceased to form part of an administration, as to members of an existing government. (Todd—Parliamentary Government in England—Volume II, page 240.)

**78.** The whole authority of the State periodically returns into the Royal hands whenever a Ministry is changed. During the interval between the retirement of one Government and the appointment of another, the King is the depository of power. Moreover, it is his personal duty to decide which of the leaders of the majority in Parliament shall be entrusted with the Premiership. The right to commission a particular statesman to form a Ministry remains, though it is conditioned by the fact that the Sovereign's field of choice is narrowly restricted. And again, within certain limits, the Sovereign may also require the acting chief of the executive to seek a fresh mandate from the electorate. Power, of a genuine kind, must rest with the Sovereign so long as it is at his discretion to "send for" the leader of the Opposition, and so long as he can—under favourable circumstances—demand or refuse a dissolution. Sidney Low—"The Governance of England".



## CHAPTER II

### BUSINESS OF THE HOUSE

PRAYERS.

ROUTINE BUSINESS.

ORDERS OF BUSINESS DAY BY DAY.

PRIVATE MEMBERS' DAYS.

DAYS DEFERRED.

GOVERNMENT DAYS.

BILLS NOT TAKEN UP ON CERTAIN DAYS.

PRIVATE AND PUBLIC BILLS.

NOTICES OF MOTION NOT PRINTED.

IMMEDIATE CONSIDERATION ON MATTER OF PRIVILEGE.

PRECEDENCE IN ORDERS OF THE DAY.

GOVERNMENT ORDERS.

ORDERS NOT TAKEN UP, DROPPED OR POSTPONED.

WHEN SENATE AND HOUSE DISAGREE.

RECEIVING MESSAGES FROM THE SENATE.

MOTION TO READ ORDERS.

ADJOURNMENT AND INTERMEDIATE PROCEEDINGS.

ADJOURNED MOTION FOR DISCUSSING URGENT MATTER.

COPY OF JOURNALS FOR GOVERNOR GENERAL.

### STANDING ORDERS

15. [20th December, 1867; 6th March, 1876; 29th March, 1876; 29th April, 1910; 10th July, 1910; 22nd March, 1927; 12th July, 1955]. (1) Mr. Speaker shall read prayers every day at the meeting of the House before any business is entered upon.

(2) The ordinary daily routine of business in the House shall be as follows:

Presenting reports by standing and special committees.

Motions.

Introduction of bills.

First readings of Senate public bills.

Government notices of motions.

(3) The order of business for the consideration of the House, day by day, after the daily routine, shall be as follows:

*Monday (Private Member's Day)*

(Subject to the provisions of standing order 56(3), six Mondays after the days upon which an Address has been agreed to, in answer to His Excellency's speech).

A. (First, second and third Mondays)

Notices of motions for the production of papers.

Notices of motions.

Private bills.

Public bills and orders.

Government orders.

B. (Fourth, fifth and sixth Mondays)

Notices of motions for the production of papers.

Private bills.

Notices of motions.

Public bills and orders.

Government orders.

C. Should an order of the day for the House to go into Committee of Supply be called on any of the said Mondays in accordance with the provisions of standing order 56(3), private Members' days shall be deferred from Monday to Monday until six Mondays have been provided for such business.

*Monday (Government Day)*

(Any Monday not herein above allotted to private Members)

Notices of motions for the production of papers.

Government orders.

Private bills.

Notices of motions.

Public bills and orders.

*Tuesday (Government Day)*

Government orders.

Public bills and orders.

Notices of motions for the production of papers.

Notices of motions.

(From five to six o'clock p.m.)

Private and public bills, the former having precedence.

If a debate on a motion "That Mr. Speaker do now leave the Chair" for the House to go into Committee of Supply be in progress at 5.00 o'clock p.m. on any Tuesday, the consideration of private and public bills shall not be entered upon in that sitting unless the said debate be concluded before 6.00 o'clock p.m.



*Wednesday (Government Day)*

Starred questions.

Notices of motions for the production of papers.

Government orders.

Notices of motions.

Public bills and orders.

*Thursday (Private Members' Day)*

(Two Thursdays after the day upon which an Address has been agreed to, in answer to His Excellency's speech).

Public bills and orders.

Notices of motions for the production of papers.

Notices of motions.

Government orders.

*Thursday (Government Day)*

(Any Thursday not herein above allotted to private Members).

Government orders.

Public bills and orders.

Notices of motions for the production of papers.

Notices of motions.

*Friday (Government Day)*

Government orders.

Public bills and orders.

Notices of motions for the production of papers.

Notices of motions.

(From five to six o'clock p.m.)

Private and public bills, the former having precedence.

(4) Notwithstanding the listing of "Notices of motions" as an item of daily business in section (3) of this order, such notices shall not be printed on the order paper after the fifth sitting day following the expiry of Monday as a private Members' day.

16. The proceedings on private and public bills on a Tuesday or a Friday, except as provided in standing orders 15(3) and 38, shall not be suspended by virtue of the operation of the provisions of standing orders relating to the adjournment of the House for the purpose of discussing a definite matter of urgent public importance or to the allocation of time to certain debates.

17. [20th December, 1867]. Whenever any matter of privilege arises, it shall be taken into consideration immediately.

18. [20th December, 1867; 10th July, 1906; 12th July, 1955]. (1) All items standing on the orders of the day (except Government orders) shall be taken up according to the precedence assigned to each on the order paper.

(2) Except as provided in standing order 56, government orders may be called in such sequence as the government may think fit.

19. [20th December, 1867; 10th July, 1906]. (1) Questions put by members and notices of motions not taken up when called may (upon the request of the Government) be allowed to stand and retain their precedence; otherwise they will disappear from the order paper. They may, however, be renewed.

(2) Orders not proceeded with when called, upon the like request may be allowed to stand retaining their precedence; otherwise they shall be dropped and be placed on the order paper for the next sitting after those of the same class at a similar stage.

(3) All orders not disposed of at the adjournment of the House shall be postponed until the next sitting day without a motion to that effect.

20. [12th July, 1955]. (1) The day to day precedence on the order paper, except as otherwise provided, shall be as follows:

(a) Third reading of bills.

(b) Reports received from committees of the whole House.

(c) Bills reported after second reading from any standing or special committee for reference to a committee of the whole House.

(d) Bills ordered by the House for reference to a committee of the whole House.

(e) Senate amendments to bills.

(f) Second reading of bills.

(g) Other orders according to the date thereof.

(2) After any bill or other order in the name of a private member has been considered in the House or in any

committee of the whole and any proceeding thereon has been adjourned or interrupted, the said bill or order shall be placed on the order paper for the next sitting at the foot of the list under the respective heading for such bills or orders.

21. [12th July, 1955]. (1) Government notices of motions for the House to go into committee of the whole at the next sitting of the House when put from the Chair shall be decided without debate or amendment.

(2) When any other Government notice of motion is called from the Chair it shall be deemed to have been forthwith transferred to and ordered for consideration under government order in the same or at the next sitting of the House.

22. [10th July, 1906]. (1) In cases in which the Senate disagree to any amendments made by the House of Commons, or to which the House of Commons has disagreed, the House of Commons is willing to receive the reasons of the Senate for their disagreeing or insisting (as the case may be) by message, without a conference, unless at any time the Senate should desire to communicate the same at a conference.

(2) Any conference between the two Houses may be a free conference.

(3) When the House requests a conference with the Senate, the reasons to be given by this House at the same shall be prepared and agreed to by the House before a message be sent therewith.

23. [20th December, 1867]. A Clerk of this House may be the bearer of messages from this House to the Senate, and messages from the Senate may be received at the Bar by a Clerk of this House, as soon as announced by the Sergeant-at-Arms, at any time whilst the House is sitting, or in committee, without interrupting the business then proceeding.

24. [20th December, 1867]. A motion for reading the orders of the day shall have preference to any motion before the House.

25. [20th December, 1867; 10th July, 1906]. A motion to adjourn (except when made for the purpose of

discussing a definite matter of urgent public importance), shall always be in order, but no second motion to the same effect shall be made until after some intermediate proceeding has been had.

26. [10th July, 1906; 12th July, 1955]. (1) Leave to make a motion for the adjournment of the House when made for the purpose of discussing a definite matter of urgent public importance must be asked after starred questions on Wednesdays and on other days after the ordinary routine of business, standing order 15(2), has been concluded.

(2) The member desiring to make such a motion rises in his place, asks leave to move the adjournment of the House for the purpose of discussing a definite matter of urgent public importance, and states the matter.

(3) He then hands a written statement of the matter proposed to be discussed to Mr. Speaker, who, if he thinks it in order, and of urgent public importance, reads it out and asks whether the member has the leave of the House. If objection is taken, Mr. Speaker requests those members who support the motion to rise in their places and, if more than twenty members rise accordingly, Mr. Speaker calls upon the member who has asked for leave.

(4) If less than twenty, but not less than five, members rise in their places, the question whether the member has leave to move the adjournment of the House shall be put forthwith, without debate, and determined, if necessary, by a division.

(5) Except with the requisite leave or support, the motion cannot be made.

(6) The right to move the adjournment of the House for the above purposes is subject to the following restrictions:

- (a) not more than one such motion can be made at the same sitting;
- (b) not more than one matter can be discussed on the same motion;
- (c) the motion must not revive discussion on a matter which has been discussed in the same session;
- (d) the motion must not anticipate a matter which has been previously appointed for consideration by

the House, or with reference to which a notice of motion has been previously given and withdrawn;

- (e) the motion must not raise a question of privilege;
- (f) the discussion under the motion must not raise any question which, according to the standing orders of the House, can only be debated on a distinct motion under notice.

27. [20th December 1867]. A copy of the Journals of this House, certified by the Clerk, shall be delivered each day to His Excellency the Governor General.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**79.** When there is a quorum of members, the Speaker reads prayers.

On February 13th, 1877, a Select Committee was appointed in the Canadian House of Commons "to consider and report upon the desirability of using a form of prayer in this Chamber." On February 19th following, the Committee reported "that it is desirable that the business of the House be opened, each day, by prayer to Almighty God to invoke His blessings upon its deliberations," and they submitted the prayer now in use by the House. The Committee recommended "that the said prayer be read by the Speaker in the language most familiar to him." The report was concurred in on the same day.

Mr. Speaker Blanchet read the prayers in English and French on alternate days, and the same practice has been followed by speakers conversant with the two languages.

**80.** Business of the House consists of proposals upon which a motion has been put from the Chair on an order of the House, either directly or by a standing order. It is divisible into such forms as bills and motions for which time is allotted and indicated on the order paper known as "Routine Proceedings and Orders of the Day." Standing Order 7 provides that at the ordinary time of adjournment the proceedings shall be interrupted and the business under consideration at the termination of the sitting shall stand over until the next sitting day when it will be taken up at the same stage where its progress was interrupted. The time of adjournment as set by Standing Order 6 is 6 o'clock on Wednesdays and Fridays and 10 o'clock on Mondays, Tuesdays and Thursdays. When the business under consideration has been interrupted before the ordinary time of adjournment by a point of order, a matter of privilege, a message delivered by Black Rod or perhaps some serious disturbance, and is not resumed before the House adjourns, it is not thereby discharged and may be placed on the order paper for "next sitting". These incidental interruptions which arise by the way do not form part of the original question. Standing Order 7 provides that the "proceedings" are interrupted but the "business under consideration" shall stand over until the next day. Although a whole hour may have elapsed between the time an incidental matter has intervened and the House has adjourned, Standing Order 7 should be ap-

plied to the original question which must appear in its proper place on the order paper prepared for the next sitting of the House. C.J. Vol. C. June 1, 1856.

**31.** The term "Prime Minister", used in Standing Order 31, was for a long time unknown to the British Constitution. It was first used officially in the Treaty of Berlin, in 1878, where Lord Beaconsfield is described as "First Lord of Her Majesty's Treasury, Prime Minister of England". When Lord Roseberry became Prime Minister, in 1894, he took into his own hands the Office of Lord President of the Council. At the time of the reconstruction of the Union Cabinet in 1900, the Court Circular alluded to the Marquess of Salisbury as "Prime Minister". In 1905, King Edward VII recognized the existence of the position and gave the Prime Minister precedence on State occasions, immediately after the Archbishop of York; but in the Table of General Precedence given in Debrett's 1940 edition, the Lord High Chancellor takes precedence immediately before the Archbishop of York, and is therefore two degrees ahead of the Prime Minister. At the coronation of King George VI, in 1937, Mr. Ramsay MacDonald, Lord President of the Privy Council, took precedence over Mr. Stanley Baldwin, Prime Minister.

In Canada, from 1867 to 1883, the Prime Minister was not President of the Privy Council, but Sir John Abbott, Sir Mackenzie Bowell and Sir Wilfrid Laurier combined both functions. So did Sir Robert Borden, until 1917, and other Prime Ministers from 1921 to 1942. The term "First Minister" is recognized by Statute in Canada. Section 4 of the Salaries Act provides a salary of \$15,000 per annum to "The Member of the King's Privy Council holding the recognized position of "First Minister". The same expression is used in Section 13 of the Senate and House of Commons Act. The revised table of precedence, dated December 3rd, 1923, as published in the "Guide to Relative Precedence", describes the head of the Ministry as the "Prime Minister of Canada". The same term is used in Standing Order 31 of the House of Commons.

In Dominion-Provincial Conferences, the term "Prime Minister" is used to describe the head of the Dominion Government and "Premier" to describe the head of a Provincial Government. This is necessary in order to avoid confusion and it seems accepted now for all time in Canada.

**82.** The "Official Opposition" is a standing proof of the British genius for inventing political machinery. It has been adopted in all the Dominion Parliaments; the lack of it is the chief weakness of most of the Continental systems. . . . It cannot be denied that under modern conditions the concerted action of the Opposition is the best means of controlling a Government—by criticising defects in administration loudly enough for the public to take notice. This is not a particularly pleasant, if salutary, experience for ministers, and it is only natural that they should be tempted to think both that the Opposition abuse their opportunities and that their opportunities are unnecessary ample. The facilities which the Opposition enjoy for initiating criticism on subjects of their own selection are dependant on technical forms and parliamentary conventions. The share of the time of the House which the Government puts at the disposal of a body whose *raison d'être* is to show up the mistakes of ministers and eventually to turn them out of office—this share of time, which during the last fifty years has not fallen below a quarter of the effective days of the session, is worth more interest—than it usually receives. The least that can be said is that since it is only through the Opposition that some measure of parliamentary control survives, the uninterrupted respect for the rights of the Opposition which contemporary Governments have shown should be accepted as *prima facie* evidence of the soundness of their parliamentary faith. Lord Campion.

**83.** The title "His Majesty's Opposition" was first used in debate by Hobhouse, afterwards Lord Broughton, who, on April 10th, 1826, in a debate on the union of the office of president of the board of trade with that of the treasury of the navy, remarked that it would be hard on His Majesty's Ministers to raise objections. For his part he thought it was more hard on "His Majesty's Opposition" to compel them to take this course. Canning hailed the phrase as a happy one and Tierney said that a better phrase could not have been invented "to designate us, for we are certainly to all intents and purposes a branch of His Majesty's Government". Sir Charles Tupper, in a farewell letter to the Canadian Conservative party, on January 17th, 1901, said: "The duty of Her Majesty's Loyal Opposition is to exercise its vast influence in restraining vicious legislation, and in giving a loyal support to proposals of the Government which commend themselves as in the in-



terests of the country; while initiating itself such measures for the commonweal as are neglected by the Administration."

Mr. Ramsay MacDonald, Prime Minister, who was a witness before a Select Committee on Procedure, in the British House of Commons, said, on the 16th of February, 1931: "The House of Commons consists not only of a Government, but of an Opposition, and they have both got functions and rights."

**84.** Motions, amendments, references to committees, first, second and third readings of bills come under the term of "proceedings in Parliament". They are the means used to the end that a matter may be considered and disposed of by the House. The word "proceeding" must derive from the verb "to proceed" which means "to advance" or "to carry on a series of actions." Members take part in the proceedings usually by speech, but many proceedings take place without debate, which shows that speeches are not essential. Speeches either help or hinder a proceeding, but they are not a proceeding. Hansard is a verbatim report of members' speeches, it is not an official record of the proceedings of the House which are really the minutes of the sittings, printed and distributed daily during sessions, and published after prorogation under the title of "Journals of the House of Commons."

**85.** The proceedings of the House must be taken up in accordance with the order of business given in the Order Paper. (Can. C.J., Vol. 63, p. 163.)

The motions allowed on Routine Proceedings are motions relating to the business of the House and for the discussion of reports from Committees. The bills which may be introduced on Routine Proceedings are not private bills which are introduced on petition under Standing Order 103.

When the Orders of the Day are called by the Speaker and before they are read by the Clerk Assistant, it is the practice sanctioned by usage but not by any positive rule for members to make personal explanations or ask questions of the Government in reference to an inaccurate report of their speeches in the official records, or in the newspapers; or in denial of certain charges made against them in the public prints; or in reference to certain remarks which had been misunderstood on a previous occasion, and which they had not before had an opportunity of explaining; or in respect to delay in obtaining returns or to the incompleteness of certain returns brought down under the order of the House; or relative to the state of public business, or other

matters of public interest. But these remarks should be brief as they are only tolerated, there being no question before the Chair when they are made, and no discussion should be allowed when a minister has replied to a question nor after a member has made his personal explanation. In asking a question, a member must not attack the conduct of the Government. If a member wishes to make personal explanations in reference to remarks which have fallen from another member, the latter ought to be in his place. B. 354, 355.

**36.** Before the Speaker calls upon the Clerk to read the orders of the day, ceremonial speeches have been allowed. Originally confined to commemorating on their deaths the public services of distinguished statesmen who were or had been members of the House, in recent times the practice has extended to other occasions of rejoicing or mourning. Such speeches are usually made by the leader of the House and supported by brief speeches from leaders of parties not in office. As no question is before the House, debate on such statements is irregular. May 15 ed., p. 360. Can. Deb. Feb. 1-1954.

In the United Kingdom House, it is not considered as part of the Speaker's duties to draw the attention of the Members to the presence of distinguished visitors in the galleries, but if the Leader of the House deems it advisable to note their visits and utter words of welcome he may do so keeping in mind that opinions may differ as to the advisability of showing friendship towards certain personages whose political conduct is open to controversy. Although the Speaker is vested by tradition with high authority as the occupant of the Chair, he must nevertheless bear in mind that his main function consists in executing orders received from the House. He cannot assume the duty of speaking on behalf of the House unless duly authorized to do so either by a rule or resolution. He should not place himself in a position where he can be criticized and must not encroach upon the prerogatives of the Leader of the House.

**37.** (1) It is a fundamental rule that with the exception of certain matters dealt with under routine proceedings, no question can be considered by the House unless it has been previously appointed either by a notice or a regular order of the House. The paper known as "Routine Proceedings and Orders of the Day" is the official agenda printed on the responsibility of the Clerk of the House, containing all the proposed questions set out in accordance with Standing Orders for mo-

tions, admendments, adjournments, rejection or adoption. All the proceedings of the House are recorded in abbreviated form in that paper. To add to, or suppress from it, any proposal which the House has ordered would constitute a serious infringement on the privileges of the House of Commons. If any serious errors are made they can only be corrected by the House in open sitting with the Speaker in the Chair.

When an Order of the Day has been read, it must thereupon be proceeded with, appointed for a future day, or discharged.

(2) An order of the day is a proceeding which can only be dealt with as an outcome of a previous order made in the House itself.

(3) The successive stages of bills are orders of the day since the House at each stage makes an order and appoints a date for the consideration of the next stage, and without such order the bill cannot be further advanced. A question or motion becomes an order of the day if the debate upon it be adjourned and the House orders the continuance of it on a subsequent date. C. 14th ed., p. 324.

(4) It is one of the fundamental principles of parliamentary procedure that when nothing is done respecting an order of business it is struck out and cannot make further progress until the procedure regulating its passage has been regulated by the House. Neither the Speaker nor any officer of the House have the power to move it forward. In the British House of Commons, Standing Order 1 sec. (5) contains the following words: "And any order of the day not reached before the termination of a sitting shall, unless the member in charge of the order has given other instructions to the clerk at the table, stand over until the next sitting."

**88.** (1) The Government being largely interested in the progress of the business of the House is responsible for allowing a question or motion to stand, if the member is absent or does not proceed when it is called. If a question or motion disappears from the Order Paper, it can only be reinstated after a new notice. But if the House is adjourned before an Order of the Day under consideration is disposed of or a motion has been made for the adjournment of the debate thereon, it is not treated as a dropped order, but, being superseded, must be revived before it again takes its place with Orders. B. 221.

(2) All motions referring to the business of the House should be introduced by the Leader of the House. (Can. C.J., Vol. 45, p. 476.)

"Let us now briefly indicate the influence directly exercised by the Leader of the House on the course of business. It is his task in the name of the Government and the party in office, to distribute over the session the programme of legislation announced in the King's speech and to advocate it in the House. He assumes the duty of proposing all such motions concerning the agenda of the House as are deemed advisable by the Government and is their spokesman in the debate thereon. With regard to every Government project, the Leader is the final authority as to its general progress, as to the time to be given to its different stages and as to any application of the closure or other available method of shortening debate and bringing matters to a conclusion. The whole policy of the Government, especially so far as it is expressed in the inner life of the House and in measures dealing with the course of its business, is concentrated in his person."—Redlich.

(3) The discharge of an order is the indispensable preliminary to the making of a different order with regard to the same subject. Thus the order for a paper to lie upon the table is sometimes discharged, whereupon another order is made by the House that the paper be withdrawn (C.J. 1921; 90). Similarly the House has discharged the order for the second reading of a Bill, and thus has been followed by an order for the withdrawal of the Bill (C.J. 1921, 89, 132). Again when the order for the second reading of a Bill was read, the Speaker called the attention of the House to the fact that the Bill should have originated in committee of the whole House, whereupon the order was discharged and the Bill withdrawn, (1921, 147). On other occasions an order has been discharged without further action, e.g. for printing a paper or for a return (C.J. 1921, 96). Part of an order has also been discharged (C.J. 1909, 11 & 58).

**89.** (1) In case of ministerial changes, explanations are generally allowed to be made when the Orders of the Day are called. It is usual to permit the leader of the Opposition to make some remarks thereon. Considerable latitude is allowed on those occasions. In the British House no debate is allowed after the ministerial statement has been made unless the adjournment of the House is moved, but such a practice could not

take place in Canada, as our adjournment motions are not debatable.

(2) In 1889, Parliament opened on Thursday, January 31st, and ministerial explanations were given on February 6th. In 1903, the opening took place on the 12th of March, and they were given on the 18th of March. In 1915, the opening was on the 8th of February, and they were given on the 16th of February. Mr. W. C. Kennedy, Minister of Railways, died on the 18th of January, 1923. The session opened on the 31st of January, 1923, and on February 22nd, the Leader of the Opposition enquired as to the appointment of a Minister of Railways. The Prime Minister said the matter was under consideration. On the 13th of March, 1923, Mr. Meighen repeated his question and the Prime Minister said he was not in a position to give a definite answer. On the 30th of April, 1923, the Prime Minister announced that Mr. Graham had been appointed Minister of Railways.

Sir Lomer Gouin resigned as Minister of Justice on January 3rd, 1924. The session opened on February 28th, 1924. On March 3rd, 1924, the Prime Minister tabled copies of correspondence between Sir Lomer Gouin and himself concerning Sir Lomer's resignation. No verbal explanations were subsequently given respecting this resignation.

The usual practice is that the Prime Minister may choose his own time to give these explanations, or he may give them in the first days of the session or after he has been asked by the Leader of the Opposition.

(3) When changes of portfolio between Ministers do not involve any question of principle, it does not seem that the Prime Minister is bound to explain them in the House. Todd, in the chapter dealing with the Ministers' responsibility to Parliament, in the 2nd volume of his work, "Parliamentary Government in England", page 487, says: "But the House has no right to ask for more than a general exposition of the main principles on which a government is formed. It has no right to enquire into all the conditions which may have taken place between the several Members of the Government."

**90.** There are precedents to show that the Governments of Canada or of the United Kingdom, like those of continental Europe, may ask the lower House of Parliament to give them a vote of confidence. On January 8, 1926, after the general elections held on September 14, 1925, had resulted in 101 Liberals,

116 Conservatives, 24 Progressives, 2 Labourites and 2 Independents, Mr. Lapointe, Minister of Justice in the Liberal Cabinet and acting leader of the House, moved: "In the opinion of this House, in view of the recent general elections, the Government was justified in retaining office and in summoning Parliament, and the Government is entitled to retain office unless defeated by a vote of this House equivalent to a vote of confidence." In October, 1953, Mr. Churchill tabled the following resolution in the United Kingdom House. "That this House approves the action of Her Majesty's Government in British Guiana." In both cases the motions were allowed and debated.

**91.** (1) When a minister makes a statement on government policy or ministerial administration, either under routine proceedings, between two orders of the day or shortly before the adjournment of the House, it is now firmly established that the Leader of the Opposition or the Chiefs of recognized groups are entitled to ask explanations and make a few remarks, but no debate is then allowed under any Standing Order (C.H. of C. Feb. 19, 1954).

(2) General arguments or observations beyond the fair bounds of explanation or too distinct a reference to previous debates are out of order; though a member has been permitted by the Speaker to make, at a subsequent sitting, an explanation regarding alleged misrepresentation in debate, or in a question to a Minister. An explanation of reflection made upon a Member in a capacity other than that of a member of Parliament has been ruled out of order. The indulgence of a personal explanation should be granted with caution; for, unless discreetly used, it is apt to lead to irregular debates. Explanations have also been allowed on behalf of gentlemen not being members, whose conduct has been reflected upon in debate; though permission to make an explanation of this nature has been refused by the Speaker. M. 14th ed., 353-4.

(3) Explanations are made to the House on behalf of the Government regarding their domestic and foreign policy; stating the advice they have tendered to the sovereign regarding their retention of office on the dissolution of Parliament; or the course they intend to adopt in the transaction and arrangement of public business. These explanations are now usually elicited by arrangement in reply to a question. But the older practice under which they were volunteered spontaneously is still sometimes followed.

(4) If in war time the Prime Minister states from his seat that it would be against public interest to discuss a certain matter (in this case cessation of work in the steel industry), a motion to adjourn the House under Standing Order 31 (now 26) cannot be entertained for the purpose of discussing that matter. C.J. Vol. 81, p. 270.

**92.** Motions respecting changes in the times of meetings or adjournments deal with the business of the House rather than government affairs and are moved by the leader of the House who is responsible for the arrangement of the business of the session and the order in which ministerial measures are introduced and debated. These motions are taken up under routine proceedings as provided in section (mm) of Standing Order 32. (Speaker Macdonald, Sept. 4, 1950, Dec. 10, 1951, Dec. 20, 1951; Speaker Beaudoin, Feb. 3, 1954).

**93.** (1) "Public Bills and Orders" must be moved in their proper order, though the House may sometimes consent to take a Bill out of its order and advance it a stage, but this is only done when there is no intention to debate the Bill.

(2) If it is wished to transfer a Bill from "Public Bills and Orders" to "Government Orders" or to "Private Bills," or to postpone "Notices of Motions" on a day when such Notices have precedence, the proper course to follow is to give two days' notice of a motion to that effect.

(3) No control is conceded Ministers over Orders in the names of private members which are governed by the ordinary rules of priority.

(4) When the House has appointed a day for the consideration of a Bill or other matter, no earlier day can afterwards be substituted. This rule was enforced even when a day had been named by mistake and though no objection was raised to the appointment of an earlier day.

(5) To replace an Order of the Day which may have been cut short by a sudden adjournment of the House or by a count out, a motion is made, without notice, under routine proceedings, before the commencement of public business, to appoint the Order either for the current sitting or for a future day.

(6) When the sponsor of a Bill does not want it to be proceeded with, he may move, when it is called for second reading, "That the Order be discharged and the Bill withdrawn". Such a motion may be made without notice, is not debatable and requires a unanimous vote. (S.O. 41.)

**94.** In the absence of a member in whose name an undebatable motion for the production of papers stands on the Order Paper, another member may, if no one objects, make the motion, provided he has been authorized to do so. He says: "Mr. Speaker, the Honourable Member for . . . being unable to be present to-day, has asked me to move for him the resolution on the Order Paper in his name." If objection is taken, the question cannot be put by the Speaker.

The House has decided, confirming the Deputy Speaker's ruling, that in a case of urgency, owing to the approaching prorogation of the session, any member other than the one whose name appears on the Order Paper, may sponsor a Private Bill in Committee of the Whole. (The Bill in question was one for divorce which had passed the Senate, and had it not been considered then by the Committee, it would have had to be reintroduced at the next session of Parliament.) (Can. C.J., Vol. LXVI, pp. 597-8.)

**95.** The transaction of public business is carried on whilst the proceedings on the Address are in progress, Bills being introduced and committees appointed.

"Notwithstanding that the declaration of the causes of summons (the Speech from the Throne) is necessary for the opening of the Session, and as it were, to give life and existence to the Parliament, the House of Commons are by no means obliged to proceed 'first' in the consideration of the matters expressed in the speech, and there are frequent instances of their postponing that consideration to other business, and sometimes for several days." (2 Hatsell, 308.)

"Side by side with the debate on the Address, other business may go on. Before the end of the debate, Bills are introduced in great numbers, both by the Government and by private members, and are read a first time, motions may be debated and questions asked and answered. A great deal of business, especially formal business, is crowded into the first few days of the session. The Standing Committees are formed, Select Committees are appointed and nominated, and the first formalities as to Private Bills are gone through." (2 Red., 61-62.)

**96.** If a Select Committee report adversely on a Public Bill, it will nevertheless appear in its proper place on the Orders of the following day under the rules, as it is only a Private Bill that disappears from the paper when the preamble is reported to be "not proven".



**97.** (1) The Speaker reads the messages from the Senate announcing that Bills passed by the Commons have been amended, and on the next day the amendments are printed word for word in the Votes and Proceedings.

In this way all the Bills, Resolutions and Addresses are received whether the mace is on or under the table—without disturbing the business of either House. The Clerk at the table is informed of the presence of the messenger from the other House and receives the message at the Bar. If any business is proceeding at the time, the Speaker will not interrupt its progress, but will announce the message (which is handed him by the Clerk), as soon as convenient opportunity presents itself.

(2) Public Bills returned to the House from the Senate with amendments are considered on Mondays after Private Bills. When the amendments are of an unimportant character, or there is no objection to their passage, they are generally read twice and agreed to forthwith; but if they are important their consideration is deferred until a future day. B. 533-4.

(3) Government Bills amended by the Senate are placed under Government Orders on the Order Paper. In case the amendments are objected to, a member may propose "That the amendments be considered that day 'three' or 'six months', and when such a motion is agreed to, the Bill is practically defeated for that session." But if there is a desire to pass the Bill, a member will move that the amendments be "disagreed to" for certain reasons which must be embodied in the motion and are communicated by message to the Senate. B. 534.

(4) When the House of Commons does not agree to Senate amendments, it passes a resolution stating reasons for its disagreement. This is communicated to the Senate. If the Senators persist in their amendments, they send a message informing the House of the fact. Upon this, the House either accepts the amendments or passes a motion setting up a conference to which each House appoints members; and a date is fixed for their meeting. Should they again disagree, the House may accept the amendments or the Senate may withdraw them, but when neither of these courses is followed, no further action is taken on the Bill.

Either House may demand a conference upon the following matters: to communicate Resolutions or Addresses to which the concurrence of the other House is desired; concerning the privileges of Parliament; to acquire or to communicate statements

of facts on which Bills have been passed by either House; to offer reasons for disagreeing to, or insisting on, amendments; or any other subjects allowed to be proper for such a proceeding. See Bourinot, 274 et seq.

While a Bill or other matter is pending, it is irregular to demand a conference upon it.

A free conference permits the managers (as the conferees are called) to discuss fully the differences between the two Houses and thus enables them to reach an agreement.

**98.** The adjournment of debate on an amendment to the motion for the Speaker's leaving the Chair may create an exceptional result, owing to the direction contained in Standing Order 56, that on Wednesdays, Thursdays and Fridays, when the Order of the Day is called for the House to go into Committee of Supply or of Ways and Means, Mr. Speaker shall leave the Chair without putting any question, provided that, except with the consent of the House, the estimates of each department shall be first taken on a day other than Wednesday, Thursday or Friday. If an adjourned debate on such an amendment is standing upon the Order Paper when supply, for consideration of which in Committee it is not necessary to propose the question for the Speaker's leaving the Chair, is to be taken, the Order of the Day for resuming the adjourned debate is removed, and procedure on the amendment is suspended, in order that the Speaker, in obedience to Standing Order 56, may leave the Chair without question put.

Debate, on an amendment proposed to the question for the Speaker's leaving the Chair for Supply, which was interrupted at 6 and 10.00 o'clock, is suspended over Wednesday, Thursday and Friday and may be resumed on any other day.

**99.** (1) The ordinary adjournment of the House is solely in the power of the House, though the pleasure of the Crown has occasionally been signified in person, by message, commission or proclamation that both Houses should adjourn, and, in some cases, such adjournments have scarcely differed from prorogations. But although no instance has occurred in which either House has refused to adjourn, the communication might be disregarded. Business has been transacted after the King's desire had been made known; and the question for adjournment has afterwards been put, in the ordinary manner. See May, p. 58.

(2) The term "intermediate proceeding" used in Standing Order 25, means a proceeding that can properly be entered on the Journals. The true test is that if any parliamentary proceeding takes place, the second motion is regular, and the clerk ought to enter the proceedings to show that the motion in question is regular. It is usual to alternate motions for adjournment of House and debate when a question is under consideration. B. 322, 323.

(3) A motion for the adjournment of debate upon a question for the adjournment of the House will not be entertained because no adjournment motion can be debated or amended.

**100.** (1) The definite matter of urgent public importance for the discussion of which a member may ask leave to move the adjournment of the House under Standing Order 26 must involve the administrative responsibility of the Government. On the 22nd of May, 1935, a member based his motion on the statement that the City of Vancouver, B.C., due to the presence of a large number of men from the unemployment relief camps who are destitute and for whom the city authorities can make no provision, is in a situation which disturbs the peace.

The Speaker ruled that the maintenance of law and order being a matter for the provincial and municipal authorities, leave could not be granted to move the adjournment of the House. An appeal was taken to the House, with the result that the decision was sustained on a vote of 82 to 62. (Can. Deb., 22 May, 1935, pp. 2971 et seq. *Ib.*, p. 514.)

(2) The "definite matter of urgent public importance", for the discussion of which the adjournment of the House may be moved under Standing Order 26, must be so pressing that public interest will suffer if it is not given immediate attention. On the 2nd of November, 1932, a member asked leave to make this motion for the purpose of discussing the necessity of immediate action being taken by the House to investigate the financial position of a certain Life Insurance Company and the conduct of its senior officers, as disclosed by a recent Police Court investigation in Chicago. The Speaker ruled that the motion should not be allowed, because he did not think the matter mentioned in the member's statement was of recent occurrence nor so urgent that the proceedings of the House should be halted so that it may be discussed. There must be a *prima facie* case of urgency. An appeal was taken, but the House sustained the Speaker's decision by a vote of 128 to 55. (Can. C.J., Vol.

71, pp. 70-71; Can. Deb., March 27, 1935, p. 2150; Can. C.J., Vol. 73, p. 409.)

(3) "Urgency" within this rule does not apply to the matter itself, but it means "urgency of debate", when the ordinary opportunities provided by the rules of the House do not permit the subject to be brought on early enough and public interest demands that discussion take place immediately. (Can. C.J., 55, p. 130.)

(4) A motion to adjourn the House under Standing Order 26, for the purpose of discussing "the serious situation in which farmers of Manitoba are at the present time, on account of lack of feed for cattle and seed grain and no satisfactory result can be obtained from the Government for relief", was ruled out of order, because the subject-matter thereof could be discussed either on the motion for the House to go into Committee of Supply or on a certain Bill then on the Order Paper in respect to unemployment and farm relief. (Can. C.J., 70, p. 96.)

(5) The adjournment of the House cannot be moved with reference to critical conditions generally prevailing in certain parts of the country. (C.J., Vol. 73, p. 280.)

Leave to make a motion for the adjournment of the House for the purpose of discussing a definite matter of urgent public importance is out of order if the matter proposed to be discussed has been moved as an amendment to the Address in Reply to the Speech from the Throne which has not yet been disposed of. (C.J., Vol. 69, p. 50.)

(6) The Speaker's duty with regard to a motion to adjourn the House for the purpose of discussing a definite matter of urgent public importance, under Standing Order 26 (formerly 31) is confined to determining as to whether, in the first instance, a motion so proposed is in order. There his responsibility ends. There is a further question as to the propriety, or desirability of discussing a matter of such grave importance. That is for the House to decide. The Speaker, having found the motion in order, may submit the question: "Has the honourable member leave to proceed?" If objection is taken the Speaker requests those members who support the motion to rise in their places. If more than twenty members support the motion, the Speaker calls upon the honourable member to propose his motion. (C.J., Vol. 54, pp. 122, 123.)

(7) The House affirmed, on the 19th of February, 1932, that there is no appeal from the Speaker's decision, that a motion, to adjourn the House for discussing an urgent matter of public

importance, cannot be made unless the member's statement shows that there is actual urgency for debate. The Speaker decided that his decision on this particular point was final. Mr. Ralston appealed from the "Speaker's refusal to permit an appeal from his decision." The Speaker was sustained by a vote of 72 to 47. (Can. C.J., Vol. 70, pp. 62-3.)

In doubtful cases, the question of urgency and of importance are left for the House to decide, by giving or withholding its support. Man. 66.

(8) Standing Order 10 of the United Kingdom House, in force since 1882, also provides that a member may propose the adjournment of the House "for the purpose of discussing a matter of urgent public importance". On the 13th of April, 1894, a member asked leave to make that motion to discuss "the neglect of the Government to take measures for the relief of Agricultural Depression during the present session". As forty members rose in support of the motion, debate was allowed, but on its conclusion, the Speaker said: "I do not think that, under the Standing Order of 1882, a motion on a subject of this kind, having such a very wide scope, was ever contemplated. What I think was contemplated, was an occurrence of some sudden emergency, either in home or in foreign affairs. But I do not think it was contemplated—if the House will allow me to state my views—that a question of very wide scope, which would demand legislation to deal with it in any effective manner, should be the subject of discussion on a motion for the adjournment of the House, because, it that was so, we might have repeated motions made by the Opposition of the day, not so much in the direction of censuring the Government for action which had been taken or not taken, for bringing to notice some grievance demanding instant remedy, as in the direction of wishing to introduce legislation on some particular subject. That is not the purpose of the Standing Order of 1882, and would, I think, cut at the root of the Order."

(9) Matters arising out of the debates of the same session, or the term of a Bill before the House of Lords, matters of privilege or order, or matters debatable only upon a substantive motion, cannot be submitted to the House under this Standing Order. (No. 10 of the United Kingdom House of Commons, No. 26 of the Canadian House.) M. 249.

(10) The Speaker is bound to apply to motions made under Standing Order 31 the established rules of debate, and to enforce

the principle that subjects excluded by those rules cannot be brought forward thereon, such as a matter under adjudication by a court of law, or matters already discussed or appointed for consideration during the current session, whether upon a substantive motion, upon an amendment, or upon an Order of the Day.

(11) The debate on a motion to adjourn the House for the purpose of discussing a definite matter of urgent public importance may be brought to an end by the adoption of a motion that the House now pass to the Orders of the Day. (Can. C.J., Vol. 53, p. 639.)

(12) The debate on the urgent matter referred to in Standing Order 26 cannot be adjourned, as the motion actually before the Chair is "that the House do now adjourn". Once the House rises, the motion is carried. But if debate is over at an early hour, it is the custom for the mover of such a motion to withdraw it, and then the House proceeds to its appointed business.

**101.** (1) When a Committee of the Whole is given leave to sit again "this day" and the House adjourns before the Committee resumes its sitting, the Order is considered as one which has not been disposed of and is postponed until the next sitting day without a motion to that effect (Standing Order 19, section 3).

(2) The expression "next sitting", "next sitting day" and "next sitting of the House", when used to state the time until which a question is ordered to stand over, mean the future sitting at which this question shall come up according to the precedence given to it by the Standing Orders.

**102.** (1) The Journals are the official records of the House. They contain all the proceedings which have actually taken place, the *res gestæ*, such as petitions presented, Bills read a first, second or third time, references of questions to committees, resolutions amended or carried, votes taken, debates adjourned, etc. "The official record of what is 'done and past', in a legislative assembly, is called the Journal. It is so called, because the proceedings are entered therein, in chronological order, as they occur from day to day; the business of each day forming the matter of a complete record by itself; hence the record is frequently spoken of in the plural as the Journals." C. 415.

(2) The Journals are prepared under the direction of the Clerk, by an officer of experience called the Clerk of Journals.

They are made up from the Clerk's scroll and whenever any question arises as to any proceeding which has taken place, the Journals alone are held to be correct. An entry therein may be amended or expunged on motion made after due notice.

(3) Upon any enquiry touching the privileges, immunities and powers of the Senate and House of Commons, or of any member thereof respectively, any copy of the Journals of the Senate or House of Commons, printed or purported to be printed by order of the Senate or House of Commons, shall be admitted as evidence of such Journals by all courts, justices, and others, without any proof being given that such copies were so printed. R.S.C. 1952.

(4) When a person requires the Journals of the Commons as evidence in a court of law, or for any legal purpose, he may either obtain from the Journal office a copy of the entries required without the signature of any officer and swear himself that it is a true copy, or, with the permission of the House, or, during prorogation, of the Speaker, he may secure the attendance of an officer to produce the printed Journal, or extracts which he certifies to be true copies; or, if necessary, the original manuscript Journal book. B. 186, 187.

**103.** (1) The privileges of Parliament were first demanded as a protection against outside interference. Members insisted on freedom from arrest for themselves and their servants during the session and forty days before its commencement and after its conclusion. The origin of that privilege has been traced back to the Saxon rule; but freedom from arrest, at no time in the history of the English House, protected members from the consequence of treason, felony or breach of peace. In 1404, it was made a high contempt of Parliament to assault a member of either House or his menial servant, and Henry VI (1422-1461), ordained that the penalty for assaulting any Lord or Commoner attending Parliament should be double damages to the party, with fine and ransom to the King. In 1512, an Act was passed providing that all suits, accusations, condemnations, executions, fines, amendments, corrections, grievances, charges and impositions put or had, or hereafter to be put or had unto members of Parliament, shall be utterly void and of no effect. Later in the sixteenth century, the House of Commons took upon itself, without the sanction of any legal ordinance or enactment, to be the sole judge of its own causes. Until 1701,

members arrogated to themselves the right not to be sued before Courts of Justice during the duration of Parliament, but, in that year, a Bill was enacted providing that suits might be brought against peers and members during the intervals of Parliament after dissolution or after any adjournment for more than fourteen days. In 1764, an Act was passed providing that if any member committed an act of bankruptcy, his creditor might proceed against him in like manner as against other bankrupts, any privilege of the Parliament to the contrary notwithstanding. The immunity enjoyed by servants was discontinued by the Act of 1701. In 1772, the claim of the House to constitute itself a tribunal for the trial of private injuries done to its members was abandoned. In 1764, the law disqualified bankrupts from sitting in the Parliament. By the time of the Reform Act of 1832, the only privilege remaining to members beyond the walls of St. Stephen's were freedom from arrest, assault, insult or menace in their coming and going from the House, and inviolability, so far as the outside world was concerned, for their utterances within the Chamber; and these are the only privileges enjoyed to-day by the Canadian Parliament under section 18 of the B.N.A. Act, which allows the Senate and House of Commons to define by statute their own privileges, provided they shall never exceed those at the passing of such statute possessed by the Commons House of Parliament of the United Kingdom.

(2) The House has always asserted the right to provide for the constitution of its own body, the right to regulate its own proceedings and the right to enforce its privileges. Anson, p. 130.

(3) It has always been admitted by the Courts that the House has the exclusive right "to regulate its own internal concerns". Anson, p. 153.

(4) The House of Commons has the exclusive power of interpreting a statute so far as the regulations of its own walls is concerned, and, even if that interpretation should be erroneous, this Court has no power to interfere with it directly or indirectly. Mr. Justice Stephen, in *Bradlaugh vs. Gossit*, 12 Q.B.D. 280.

**104.** (1) It is the function of the Speaker to direct the attention of the House when occasion arises to a breach of its privileges in Bills or amendments brought from the Senate, and



to direct the special entries to be made in the Journals by which the House, in respect of particular amendments, signifies its willingness to waive its privileges without thereby establishing a general precedent.

(2) It has often been laid down that the Speaker's function in ruling on a claim of breach of privilege does not extend to deciding the question of substance whether a breach of privilege has in fact been committed—a question which can only be decided by the House itself. H.C. Deb. 1917, 93c, 1963; Parl. Deb. (1887) 314c, 1717.

(3) A matter of privilege which claims precedence over other public business should be a subject which has recently arisen and which calls for the immediate interposition of the House. The matter should be raised at the earliest opportunity. H.C. Deb. 1939-40, 363, c611-3. A matter which occurred during recess was refused precedence because it was not raised on the first day of the session. Parl. Deb. 11901, 92, cc. 376-78. A matter which is postponed to suit the convenience of the House or to secure the attendance of a Member implicated, or to give the Speaker an opportunity to consider it fully does not forfeit priority when eventually raised. Parl. Deb. 1907, 178, c198; H.C. Deb. 192, 173, c1341. do 1940-1, 374, c2046.

(4) Certain urgent matters, such as assaults upon or insults to Members if they should occur during a sitting of the House, may be raised at once in spite of the interruption of a debate or other proceedings (except a division in progress). A complaint on such a matter is entertained by the House as soon as it is raised, but if complaint is made in committee (of the whole) the chairman reports progress and the speaker resumes the chair. The chairman has refused to interrupt committee proceedings, because he thought the matter raised was not one which obviously concerned the privileges of the House". H.C. Deb. (1909) 9, c2370.

(5) As a motion taken at the time for matters of privilege is thereby given precedence over the prearranged program of public business, the Speaker requires to be satisfied, both that there is a *prima facie* case that a breach of privilege has been committed, and also that the matter is being raised at the earliest opportunity. If he is not so satisfied he may allow the member to make a statement with a view to ascertaining whether or not a *prima facie* case can be made out. The right of making complaint of a breach of privilege is open to any Member

of the House, and, even if an individual member alone is affected, is not confined to that Member. M. 356.

**105.** (1) No general statute or order in council can override the privileges, immunities and powers of the Commons. As the prerogatives of the Crown can only be given away or delegated to others by the consent of the Crown stated in express terms, so the rights, privileges and immunities of the House of Commons cannot be taken away by implication or by the vague terms of any statute, but only by the express words of the law or by the express resolution of the House. Bourinot, 1st ed., pp. 184-185.

(2) It is the practice in the House of Commons to bring up a question of privilege after prayers, and before the House has taken up the Orders of the Day. Only in very aggravated cases, requiring the immediate interposition of the House, will any business be suddenly interrupted. (B. 303), May says, p. 241, 12th ed., that "the proceedings of the House may be interrupted at any moment, save during the process of a division, by a motion based on a matter of privilege, when a matter has recently arisen which directly concerns the privileges of the House, and in that case the *House will entertain the motion forthwith*". Bourinot, p. 303, quotes an ancient authority as saying: "Whether any question is or is not before the House, and even in the midst of another discussion, if a member should rise to complain of a breach of privileges of the House, *they have always instantly heard him*." It seems that the first duty of Parliament is to keep its privileges and no rule or standing order should restrain its conduct when it must vindicate its authority.

(3) A matter of privilege must be one which has recently arisen involving the privileges of the House, and calling for its immediate interposition.

The quality of privilege, and the consequent right of immediate consideration do not depend solely on the nature and object of the motion, but may be imparted or withdrawn by the circumstances that attend the motion. M. 265.

A dispute arising between two honourable members as to allegations of facts hardly fulfills the conditions of a privilege question, and, if deemed to be a matter to be at once entertained, it is more convenient to postpone other business rather

than extend the area of privilege. Blackmore (Denison's Decisions), 154.

**106.** (1) Although either House may expound the law of Parliament, and indicate its own privileges, it is agreed that no new privilege can be created. In 1704, the Lords communicated a resolution to the Commons at a conference, "That neither House of Parliament have power, by any vote or declaration, to create to themselves new privileges, not warranted by the known laws and customs of Parliament", which was concurred in by the Commons. 14 C.J. 555, 560.

(2) The dignity and independence of the two Houses are in great measure preserved by keeping their privileges indefinite. If all the privileges of Parliament were set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof, to harass any refractory member and violate the freedom of Parliament.—Blackstone.

**107.** (1) "Whatever matter arises concerning either House of Parliament, ought to be discussed and adjudged in that House to which it relates, and not elsewhere. Judges ought not to give any opinion of a matter of Parliament, because it is not to be decided by the common law, but *secundum legem et consuetudinem Parliamenti*; and so judges in divers Parliaments have confessed."—Sir Edward Coke.

(2) The right to commit for contempt, though universally acknowledged to belong to both Houses, has been regarded with jealousy. But whilst the particular acts of both Houses should, undoubtedly, be watched with vigilance when they appear to be capricious or unjust, it is unreasonable to cavil at privileges which are established by law and custom, and are essential to the dignity and power of Parliament. M. 74.

(3) The power of commitment with all the authority which can be given by law becomes the key-stone of parliamentary privilege. Either House may adjudge that any act is a breach of privilege and contempt, and if the warrant recites that the person to be arrested has been guilty of a breach of privilege, the courts of law cannot enquire into the grounds of the judgment, but must leave him to suffer the punishment awarded by the High Court of Parliament, by which he stands committed. M. 78.

**108.** (1) Anything which may be considered a contempt of court by a tribunal, is a breach of privilege if perpetrated against Parliament, such as wilful disobedience to, or open disrespect of, the valid Rules, Orders or Process, or the dignity and authority of the House, whether by disorderly, contemptuous, or insolent language, or behaviour, or other disturbing conduct, or by a mere failure to obey its Orders.

(2) An accusation of partiality and discourtesy directed against the Chairman of Ways and Means, was brought before the House as a matter of privilege on the 19th July, 1909. The member who had made the accusation, acknowledged its impropriety and withdrew it. The Speaker declared the offence to be rather a serious one, but suggested that the House would not wish, under the circumstances, to pursue the matter further. 8, H.C. Deb. 5, p. 31.

(3) Libels on members have also been constantly punished: but to constitute a breach of privilege they must concern the character or conduct of members in that capacity, and the libel must be based on matters arising in the actual transaction of the business of the House.

(4) Scandalous charges or imputations directed against members of a Select Committee are equivalent to libellous charges brought against the House itself, while a letter complaining that a member who had been nominated upon a Select Committee would be unable to act impartially upon it has been adjudged a breach of privilege. 315 H.D. 3s, 647; 155 C.J., 179; 7 H.C. Deb., 5s., 235.

(5) The offer of a bribe in order to influence a member in any of the proceedings of the House, or of a Committee, has been treated as a breach of privilege, being an insult not only to the member himself, but to the House. H.C.J., 274, 275; 14 ib., 474; 17 ib., 493, 494; 19 ib., 542.

The acceptance of a bribe by a member has ever, by the law of Parliament, been a grave offence, which has been visited by the severest punishments. 9 C.J., 24.

(6) Nor has the law of Parliament been confined to the repression of direct pecuniary corruption. To guard against indirect influence, it has further restrained the acceptance of fees by its members for professional services connected with any proceeding or measure in Parliament. A member is accordingly incapable of practising as counsel before the House, or any Committee.

**109.** (1) In the Commons, on the 12th April, 1733, and on the 1st June, 1780, it was resolved that it was a high infringement of the privilege of the House, a crime and misdemeanour, to assault, insult or menace any member of the House, in his coming or going from the House, or upon the account of his behaviour in Parliament; or to endeavour to compel members to declare themselves in favour of or against any proposition then depending, or expected to be brought before the House. M. 87.

(2) Witnesses, petitioners and others, being free from arrest while in attendance on Parliament, are further protected, by privilege, from the consequences of any statements which they may have made before either House; and any molestations, threats or legal proceedings against them, will be treated by the House as a breach of privilege. M. 129, 130.

The House will proceed with the utmost severity against persons who tamper with witnesses, in respect of evidence to be given to the House, or any committee thereof; who endeavour to deter or hinder persons from appearing or giving evidence, and who give false evidence before the House or any committee thereof.

(3) It is declared to be a breach of privilege for a member, or any other person, to publish the evidence taken before a Select Committee, until it has been reported to the House. M. 83.

(4) Resistance to the Sergeant-at-Arms, or his officers, or others acting in execution of the orders of either House, has always been treated and punished as a contempt. M. 75.

(5) Service of a criminal process on a member within the precincts of Parliament, whilst the House is sitting, may be a breach of privilege. M. 122.

(6) Either House will punish in one session offences that have been committed in another. M. 99.

(7) A breach of privilege committed against one Parliament may be punished by another; and libels against former Parliaments have been punished. M. 100.

**110.** It is a breach of privilege to molest any senator or member of the House of Commons on account of his conduct in Parliament. Courts have decided in the United Kingdom that contempt was implied in the following instances: Challenging members to fight on account of their behaviour in the House

or any committee thereof, or even on account of remarks made outside the House which touched proceedings in the House; writing letters to a member taking notice of speeches said to have been made by him in the House and threatening to contradict them from the gallery; sending insulting letters to members in reference to their conduct in Parliament; threatening to inflict pecuniary loss upon a member on account of his conduct in Parliament. On the 26 of February 1701, the House of Commons of the United Kingdom resolved that to print or publish any libels reflecting upon any member of the House for or relating to his service therein was a high violation of the rights and privileges of the House. But to constitute a breach of privilege a libel upon a member must concern his character or conduct in his capacity as a member and the conduct or language on which the libel is based must be actions performed or words uttered in the actual transaction of the business of the House. Bad faith must be imputed and the charge cannot be indefinite. A libel on a member's extra-parliamentary conduct may however constitute a breach of privilege if it is designed to influence the proceedings of the House. The same rule applies to a charge against a member for conduct which renders him unworthy to sit in Parliament and to criticize the House for not expelling him.

**111.** The Journals of the United Kingdom House of Commons give the following examples of speeches and writings which have been held to constitute breaches of privileges:

(a) Reflections on the character of the Speaker and accusations of partiality in the discharge of his duty.

(b) Reflections upon the conduct of the Lord Chancellor (presiding officer in the House of Lords) in the discharge of his duties in the House of Lords.

(c) Reflections upon the conduct of the Chairman of Committees.

(d) Reflections upon the impartiality of the Chairman of Ways and Means.

(e) Reflections upon the conduct to the Chairman of a Standing Committee.

(f) Imputing unfair conduct to the Chairman of a Select Committee.

(g) Imputations against members serving on private bill committees.

(h) Imputations against members of corruption in the execution of their duties.

(i) Asserting that a member could control the decision of a committee on a private bill and offering to do so for a corrupt consideration, and being cognizant of and assisting in the matter of such offer.

(j) Publishing placards reflecting on the conduct of certain members as "inhuman" and "degrading".

(k) Sending a letter to a member complaining that a member who had been nominated as a member of a select committee would be unable to act impartially upon it.

(l) Wilful misrepresentation of the proceedings of members is an offence of the same character as a libel.

As early as the 22nd of April 1699, the Commons of England resolved "That the publishing of the names of the members of this House and reflecting upon them, and misrepresenting their proceedings in Parliament is a breach of the privileges of this House and destructive of the freedom of Parliament".

**112.** (1) Parliament is not concerned whether or not a libel uttered against it is liable to be tried by a court of law, either of civil or criminal jurisdiction. May says: "Both Houses will punish not only contempts arising out of facts which the ordinary courts will take cognizance, but those of which they cannot, such as contemptuous insults, gross calumny or foul epithets by word of mouth not within the category of actionable slander or threat of body injury."

(2) There is the right, inherent in each House, to exclusive cognizance of matters arising within it. This is the basis of the complete autonomy of each House in respect to its procedure. And hence are derived the special rights of the House which may be called the clasps which bind together the whole subject matter of privilege, namely, its right in any particular case to be the sole and authoritative judge as to the existence and extent of a privilege and as to whether it has been infringed, and its further right to use its inherent power to punish, by way of sanction to the judgment at which it arrives.—Red.

(3) Every one is guilty of an indictable offence and liable to fourteen years' imprisonment who confederates, combines or conspires with any person to do any act of violence in order

to intimidate or to put any force or constraint upon any legislative council, legislative Assembly or house of Assembly.

Proceedings cannot be taken in a court of law against any person for his conduct in conformity to orders given by either House of Parliament. Such proceedings would be a breach of privilege and courts have refused to entertain them on the ground that the causes of complaint were not cognizable by a court of law (*Chaffers v. Goldsmith*, Times report 20th May 1892).

**113.** Members often raise so-called "questions of privilege" on matters which should be dealt with as personal explanations or corrections, either in the debates or the proceedings of the House. A question of privilege ought rarely to come up in Parliament. It should be dealt with by a motion giving the House power to impose a reparation or apply a remedy. There are privileges of the House as well as of members individually. Wilful disobedience to Orders and Rules of Parliament in the exercise of its constitutional functions; insults and obstructions during debate are breaches of the privileges of the House. Libels upon members and aspersions upon them in relation to Parliament and interference of any kind with their official duties, are breaches of the privileges of the members. But a dispute arising between two members, as to allegations of facts, does not fulfill the conditions of parliamentary privilege. An attack in a newspaper article is not a breach of privilege, unless it comes within the definition of privileges above given, and then a member is bound to lay on the Table the newspaper in which the article complained of appears. It was decided by Mr. Speaker Brand, in 1878, that a member having failed to take that course, and having brought up cuttings from newspapers instead, the question of privilege which he had brought forward could not be entered upon. The incriminating passages from a newspaper should be read in the House by the Clerk, and then a charge should be made that they constitute a breach of privilege. Unless they relate to the House or the conduct of a member, they do not constitute a breach of privilege.

**114.** Cases may arise of communications, beyond the walls of Parliament, between one member and another, or between a member and a minister, so closely related to some matter pending in, or expected to be brought before, the House, that though they do not take place in the Chamber or in a committee room,



they form part of the business of the House, as, for example, where a member sends to a minister the draft of a question he is thinking of putting down or shows it to another member with a view to obtaining advice as to the propriety of putting it down, or as to the manner in which it should be framed. Sir Robert Atkyns, sometime Lord Chief Baron of the Exchequer, says that "the Commons' right and privilege so far extends, that not only what is done in the very House, sitting the Parliament, but whatever is done relating to them, during the Parliament and sitting the Parliament, is nowhere else to be punished but by themselves or a succeeding Parliament, although done out of the House. . . . In a just sense, any offence committed by a member relating to the Parliament, though done out of the House, is termed an offence in Parliament". Committee Report in Sandys Case, U.K., 1939.

**115.** The Habeas Corpus Act is binding upon all persons whatever, who have prisoners in their custody; and it is therefore competent for the judges to have before them persons committed by either House of Parliament for contempt; and it is the practice for the Sergeant-at-Arms and others, by order of the House, to make returns to writs of Habeas Corpus. Although the return is made according to law, the parties who stand committed for contempt cannot be admitted to bail, or the cause of commitment be enquired into, by the courts of law. M. 79.

**116.** The committal of a member for any criminal offence is brought before the House by a letter addressed to the Speaker by the committing judge or magistrate. M. 123. The letter may then be referred to the Committee on Privileges.



## CHAPTER III

### RULES OF DEBATE

MEMBER SPEAKING.  
MEMBERS RISING SIMULTANEOUSLY.  
WITHDRAWAL OF MEMBERS.  
SPEECHES LIMITED TO 40 MINUTES.  
DEBATABLE MOTIONS.  
CLOSURE.  
EXPLANATIONS.  
IRRELEVANCE.  
OFFENSIVE LANGUAGE.  
READING THE QUESTION.  
SPEAKING TWICE.  
REPLY.

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### STANDING ORDERS

28. [20th December, 1867]. Every member desiring to speak is to rise in his place, uncovered, and address himself to Mr. Speaker.

29. [20th December, 1867; 10th July, 1906]. When two or more members rise to speak, Mr. Speaker calls upon the member who first rose in his place: but a motion may be made that any member who has risen "be now heard", or "do now speak", which motion shall be forthwith put without debate.

30. [20th December, 1867; 6th March, 1876; 22nd March, 1927]. If anything shall come in question touching the conduct of any member, or his election, or his right to hold his seat, he may make a statement and shall withdraw during the time the matter is in debate.

31. [22nd March, 1927]. When Mr. Speaker is in the Chair, no member, except the Prime Minister and the Leader of the Opposition, or a Minister moving a Government Order and the member speaking in reply immediately after such Minister, or a member making a motion of "No Confidence" in the Government and a Minister replying thereto, shall speak for more than forty minutes at a time in any debate.

32. [24th April, 1914; 22nd March, 1927; 12th July, 1955]. (1) The following motions are debatable:

Every motion:

- (a) standing on the order of proceedings for the day, except as otherwise provided in these standing orders;
- (b) for the concurrence in a report of a standing or special committee;
- (c) for the previous question;
- (d) for the second reading of a bill;
- (e) for the third reading of a bill;
- (f) for the consideration of Senate amendments to House of Commons Bills;
- (g) for a conference with the Senate;
- (h) for the adjournment of the House when made for the purpose of discussing a definite matter of urgent public importance;
- (i) for the adoption in Committee of the Whole, or of Supply, or of Ways and Means, of the resolution, clause, section, preamble or title under consideration;
- (j) for the appointment of a committee;
- (k) for reference to a committee of a report or any return laid on the Table of the House;
- (l) for the suspension of any Standing Order;
- (m) and such other motion, made upon routine proceedings, as may be required for the observance of the proprieties of the House, the maintenance of its authority, the appointment or conduct of its officers, the management of its business, the arrangements of its proceedings, the correctness of its records, the fixing of its sitting days or the times of its meeting or adjournment.

(2) All other motions, including adjournment motions, shall be decided without debate or amendment.

33. [24th April, 1913; 12th July, 1955]. Immediately before the order of the day for resuming an adjourned debate is called, or if the House be in Committee of the Whole, or of Supply, or of Ways and Means, any Minister of the Crown who, standing in his place, shall have given notice at a previous sitting of his intention so to do, may

move that the debate shall not be further adjourned, or that the further consideration of any resolution or resolutions, clause or clauses, section or sections, preamble or preambles, title or titles, shall be the first business of the Committee, and shall not further be postponed; and in either case such question shall be decided without debate or amendment; and if the same shall be resolved in the affirmative, no member shall thereafter speak more than once, or longer than twenty minutes in any such adjourned debate; or, if in Committee, on any such resolution, clause, section, preamble or title; and if such adjourned debate or postponed consideration shall not have been resumed or concluded before one o'clock in the morning, no member shall rise to speak after that hour, but all such questions as must be decided in order to conclude such adjourned debate or postponed consideration, shall be decided forthwith.

34. [20th December, 1867; 10th July, 1906; 22nd March, 1937]. (1) Any member addressing the House, if called to order either by Mr. Speaker or on a point raised by another member, shall sit down while the point is being stated, after which he may explain. Mr. Speaker may permit debate on the point of order before giving his decision, but such debate must be strictly relevant to the point of order taken.

(2) Mr. Speaker or the Chairman, after having called the attention of the House, or of the Committee, to the conduct of a member who persists in irrelevance, or repetition, may direct him to discontinue his speech, and if then the member still continues to speak, Mr. Speaker shall name him, or, if in Committee, the Chairman shall report him to the House.

35. [20th December, 1867; 22nd March, 1927]. No member shall speak disrespectfully of Her Majesty, nor of any of the Royal Family, nor of His Excellency or the person administering the government of Canada nor use offensive words against either House, or against any member thereof. No member may reflect upon any vote of the House, except for the purpose of moving that such vote be rescinded.

36. [20th December, 1867; 22nd March, 1927]. When the question under discussion does not appear on the order paper or has not been printed and distributed, any member may require it to be read at any time of the debate, but not so as to interrupt a member while speaking.

37. [20th December, 1867; 10th July, 1906; 22nd March, 1927]. (1) No member may speak twice to a question except in explanation of a material part of his speech which may have been misquoted or misunderstood, but then he is not to introduce any new matter, and no debate shall be allowed upon such explanation.

(2) A reply shall be allowed to a member who has moved a substantive motion, but not to the mover of an amendment, the previous question or an instruction to a committee.

(3) In all cases Mr. Speaker shall inform the House that the reply of the mover of the original motion closes the debate.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**117.** (1) The privilege of freedom of speech enjoyed by members of Parliament is in truth the privilege of their constituents. It is secured to members not for their personal benefit, but to enable them to discharge the functions of their office without fear of prosecution, civil or criminal. The privileges of Parliament, as the Commons has declared in their protestations of 1621, are the birthright and inheritance of the subject. "Parliaments without parliamentary liberty, says Pym, are but a fair and plausible way into bondage. Freedom of debate being once foreclosed, the essence of the liberty of Parliament is withal dissolved."—Committee Report in Sandys Case, U.K. 1939.

(2) Freedom of speech is declared by the Bill of Rights in the following terms: "That the freedom of speech and debates or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament." "This, as the Right Hon. Sir Donald B. Somervell, D.B.E., K.C., M.P., said before the committee in the Sandys Case, in 1939, is not necessarily an exhaustive definition of the cognate privileges." But even assuming that it is, the privilege is not confined to words spoken in debate or to spoken words, but extends to all proceedings in Parliament. While the term "proceedings in Parliament" has never been construed by the Courts, it covers both the asking of a question and the giving written notice of such questions, and includes everything said or done by a member in the exercise of his functions as a member in a Committee in either House, as well as everything said or done in either House in the transaction of parliamentary business.—Sir Gilbert Campion.

**118.** It has never been understood in the Canadian House of Commons that the word "proceedings" covered speeches; it is not applied to arguments but it covers utterances bearing directly on making motions, moving amendments, presenting reports, putting the questions, answering questions placed on the Order Paper, voting, naming a member, etc.; it is construed as relating to procedure and not to debates.

A Member's speech dealing with such matters as explanations, congratulations, condolences, ministerial explanations and the like, which have not been appointed for consideration and do

not appear on the order paper, cannot be regarded as part of the proceedings of the House.

**119.** (1) One of the main functions of the House consists in debating public issues, a function which can only be filled by complete freedom of speech. There will always be contests between groups and parties, minority and majority, and, in the debates that follow, the rules of procedure are all-important. Delays, multiplicity of amendments and even obstruction must not always be regarded as illegitimate political weapons. Rules of absolute rigidity have no place in the House of Commons. The United Kingdom House has gone further than us in modernizing some of its rules. Although we may take a leaf out of its book, we have developed a parliamentary practice of our own based on British principles and yet clearly Canadian. While we appreciate the long experience of the United Kingdom House and seek to profit therefrom, we are the absolute and independent masters of our own procedure in accordance with our circumstances and needs.

(2) The mere object of shortening sessions may lead to an undue curtailment of the freedom of speech. The duties of a representative Parliament are too important to be performed in a hurry. No question should be decided until it has been fully discussed. Although some effort ought to be made to economize time, every shade of opinion has the right to find expression and members who desire to give their views should not be prevented from doing so. Canada is a vast country, extending from the Atlantic to the Pacific Ocean. The problems of the West are not those of the East. The viewpoints of members of Parliament from British Columbia and the Prairie Provinces differ from those of Ontario; Ontario differs from Quebec; and Quebec from the Maritime Provinces. For this reason debates in the House are necessarily lengthy. A two-month session, if it is mismanaged, is more wasteful of time than a six-month session during which no time has been lost. Debates have to be free and they must also be relevant. In Parliament every corner of the country is represented and no rule should silence elected representatives when they think they have a message to deliver. Freedom of speech is a sacred principle and if there is a place where it should be fully respected that place is the Parliament of the nation, and it is the Speaker's responsibility to see that this principle is not infringed upon.



(3) Relevancy is not easy to define. A wrong comprehension of it may have a serious effect on the freedom of speech. Members are often deprived of their right to speak on the pretext that their remarks are irrelevant when as a matter of fact they refer to matters perhaps remote but yet related, even indirectly, to the question under debate. In border line cases the Member should be given the benefit of the doubt. A great deal of latitude must be allowed in the House of Commons which is a forum where every phase of public affairs can be discussed and every Member has the right to be heard, even if in doing so he sometimes disregards the rigidity of procedure.

**120.** (1) The proceedings between the rising of a Member to move a motion and the ascertainment by the Chair of the decision of the House constitute a debate, and this process affords an opportunity for, and usually involves discussion, although a decision may be reached without discussion. The interval between the proposing and the putting of the question, which is usually used for discussion, gives an opportunity for further proceedings such as the moving of an amendment; and this may give rise to a subsidiary debate, with its own question and decision, within the principal debate. M. 15th, p. 376.

(2) Debate arises when a question has been proposed by the Speaker and before it has been fully put. A question is fully put when the Speaker has taken the voices of the ayes and the noes. M. 14th, pp. 418-19.

(3) Debate is a mutual play of opinion upon opinion expressed by the speeches of members of a numerous body of men occupied with some question to be answered in the affirmative or negative. (The procedure of the House of Commons by Josef Redlich, Vol. III, p. 51.)

**121.** (1) There should not be a list of Speakers with an order of precedence in the House of Commons. Any member who wishes to speak may rise and endeavour to catch the Speaker's eye. He who is first seen has the right to speak. By old parliamentary usage, a member who wishes to make his maiden speech enjoys the privilege of being first seen by the Speaker, if he rises at the same time as other members; but the privilege will not be conceded unless claimed within the Parliament to which the member was first returned.

(2) The succession of speakers is left entirely to the Speaker. If his call is disputed by some member who thinks he rose before the Speaker's choice, a motion may be made

under S.O. 35, that "he be now heard." In calling upon members to speak, it is customary for the Speaker to try and arrange for speakers *pro* and *con* alternatively. When, as often happens, the debate reaches its climax in a duel of speeches between the two party chiefs, the Leader of the House and the Leader of the Opposition are, if possible, called in immediate succession.

(3) On the 9th of April, 1913, Sir Wilfrid Laurier and Mr. Hazen rose at the same time and Mr. Northrup moved that Mr. Hazen "be now heard". See Can. Com. J. 1913, p. 452.

**122.** It is a paramount principle that "no member may speak except when there is a question before the House". The only exceptions to this principle are the following: questions put before the commencement of public business to ministers or other members of the House, questions of privilege, personal explanations and statements made by the Ministers of the Crown regarding public affairs.

On resuming an adjourned debate, the member who moved its adjournment is by courtesy entitled to speak first if he rises in his place when the Order is called, but if he does not avail himself of this privilege he is not thereby debarred from subsequently joining in the debate. 333 H.D. 3s, 1132, 1284; ib. 308, ib. 614; 38 ib. 5s, 624.

**123.** Following the adoption of Standing Orders 6 and 31, which provide for the adjournment of the House at 6 or 10 o'clock and for limiting the length of speeches to forty minutes, if a member has not concluded his speech at 6 or 10 o'clock, he is allowed to move the adjournment of the debate, but unless he rises to speak first on the resumption of the debate, he will be debarred from subsequently joining in the debate, for his speech must be continuous if it is to last forty minutes. Otherwise, he would be making two speeches, which is prohibited by Standing Order 37.

**124.** (1) In order to be allowed to speak more than forty minutes under Standing Order 31 a member who speaks immediately after a minister has moved a government measure must speak in opposition to the motion. C.J. Vol. 66, p. 394, C.J. Vol. 96, p. 560.

(2) A Member who has already spoken forty minutes on a motion of non-confidence ought not to speak again on an amendment to that motion, because Standing Order 31 cannot be construed as declaring that more than one motion of "no

confidence" can be under consideration at the same time by the House. The final decision on the question of want of confidence will only be reached when Members have voted on the motion either as amended or in its original form. The right to speak more than forty minutes belongs to the Member who moved the original motion of no-confidence; it does not belong to the mover of an amendment which just added reasons why, in his opinion, the House should vote against the Government. C.J. Vol. 83 (1943), p. 143.

**125.** (1) A Member who has already spoken may rise, and speak again on a point of order or privilege if he confines himself to that subject, and does not refer to the general tenor of the debate. (Parl. Deb. 1868, 69, 195, c208.)

(2) The proceedings and report of a select committee may not be referred to in debate before they have been laid upon the table.

(3) A member may not speak against or reflect upon any determination of the House, unless he intends to conclude with a motion for rescinding it.

(4) A member speaking immediately after the Minister has moved that the Speaker leave the Chair for Committee of Supply or Ways and Means, may speak for more than forty minutes. He has that right whether he moves an amendment or not. (Can. Com. J. 1929, pp. 394-5-6.)

**126.** (1) If a member desires to ask a question during debate, he should first obtain the consent of the member who is speaking. If the latter ignores the request, the former cannot insist, even if he thinks he is being misrepresented. He cannot make a denial during the speech, but he must wait until the member has resumed his seat and then he may ask leave to make a statement, or he must wait until his turn comes, to address the House. Standing Order 12 is compulsory. No one has a right to interrupt a member who is addressing the House, by putting a question to him or by making or demanding an explanation. A member may allow interruptions through a sense of courtesy, but it is entirely at his option to give way or not to an immediate explanation. The Speaker in the United Kingdom House has warned a member that if he continued disorderly interruptions, he would name him as disregarding the authority of the Chair. On the 24th May, 1881, a member persisting in disorderly interruptions was named by the Speaker, whereupon a motion was made that the member be suspended

from the service of the House. Speaker Brand has declared that interruptions on points of order are very often themselves disorderly. (E. Hans. 3s. Vol. 261, pp. 1250, 1257, 1694, ib. 157, p. 1419-21; ib. 163, p. 1505; ib. 178, p. 619; ib. 179, p. 572.)

(2) The rule is well known, that interruptions should not be tolerated. On the 25th November, 1932, when a member interrupted with these words: "May I ask the honourable member a question?" and the request was refused, Mr. Speaker took the opportunity to give the following ruling: "It is out of order to interrupt a speaker in this way. When a member speaking is asked whether or not he will permit a question, he signifies his willingness to be interrupted by taking his seat; when he does not do so, he indicates that he does not wish to be interrupted. (Can. Deb., November, 1932, p. 1607.)

**127.** (1) Formerly all motions were debatable, unless some rule or other parliamentary usage could be quoted to the contrary. But at present the rule is reversed. All motions are to be decided without debate or amendment, except those specifically recognized as debatable under Standing Order 32.

Motions which come under ss. (m) of Standing Order 32 are such as:

Motions relating to the time of sitting and the business of the House, or,

Approving appointments, transfers, dismissals or retirement by the Civil Service Commission of certain officers of the House, or,

Expressing sympathy for the death of some prominent person, or,

Acknowledging any gift made to the House, or,

Accepting or making any invitation, or,

Making an unimportant correction in the Debates, Votes and Proceedings and Journals of the House, or,

For the election of the Chairman of Committees of the Whole House, or,

For the appointment of the Special Selection Committee.

Questions of privilege when raised under Routine Proceedings also come within that category.

(2) Unless discussion is based upon a substantive motion drawn in proper terms, reflections must not be cast in debate upon the conduct of the sovereign, the heir to the throne or members of the Royal Family, the Governor General of a Dominion, the Speaker, the Chairman of Ways and Means,

members of either House of Parliament, judges of the Superior Courts of the United Kingdom, including persons holding the position of a judge, such as a judge of the Court of Bankruptcy or a county court; nor may opprobrious reflections be cast in debate on sovereigns and rulers over, or governments, of countries in amity with his Majesty, or their representatives in this country.

(3) When a statement is made affecting an Honourable Member, which he denies, Mr. Speaker thinks that the House will feel that the Honourable Member has a right to make an explanation on a personal matter. He will not exceed an explanation of the particular matter. (Hans., 4s, Vol. 342, p. 41.)

(4) A personal explanation has been permitted to be made by a member on behalf of another who was abroad, or was ill or was suspended from the service of the House. 157 H.D., 3s. 78; 75 H.C. Deb. 54, 1487; 41 H.C. Deb. 54, 3207.

(5) An explanation of reflections made upon a member in a capacity other than that of a member of Parliament has been ruled out of order.

**128.** (1) A personal attack, by one member upon another, is an offence against the House, in the person of one of its members, which, on account of the respect due from every member to the character and dignity of the House, as well as the importance of preserving regularity in the debates, calls for the prompt interference of the Speaker, in order that any irregularity, into which a member may have been betrayed in the warmth of debate, may be rectified, and that any expressions, which may be disrespectful to the House, or painful to the feelings of individual members, may be explained, apologized for, or retracted. (Hans. (2), XVI, 470.)

(2) In the case of grave disorder arising in the House the Speaker may, if he thinks it necessary to do so, adjourn the House without question put, or suspend any sitting for a time to be named by him.

**129.** The difficulty which often occurs, of obtaining an apology for words spoken in debate, especially when the offending person thinks he had sufficient provocation for using the expressions objected to, ought to be a warning to the House, and particularly to the Chair, to interfere at first; and not to permit any expressions to pass from any member unnoticed, which, being applied by any other member as personally offensive to himself, may draw forth further words of heat and con-

tumely, till, at last, confusion arises—different members take a warm and eager part in the dispute—and besides the time that is lost in composing the differences, the House of Commons exhibits a scene of indecency and disorder, not very becoming to their character as gentlemen, much less as one of the component parts of the great council of the nation assembled in Parliament. (Cush. No. 1699.)

**130.** “In calling upon a member to explain, or apologize, the Speaker sometimes accompanies the demand with remarks calculated to allay heat, and restore harmony; such, for example, as that “the gentlemen must have heard imperfectly or misunderstood those expressions which he so warmly condemns;” that “the gentleman had allowed language to escape him—unintentionally, no doubt—in the heat of debate, which he was sure he would be anxious to explain;” that “he was sure the honourable member could not mean to impute to any gentleman in that House a premeditated and deliberate intention to use expressions such as those he had described;” “that he was sure the member, having so offended, would discharge his duty by apologizing for the offensive expressions he had used;” or that “he was quite sure the honourable member did not mean to express what his language would imply.” (Cush. No. 1695.)

**131.** In determining whether a discussion is out of order on the ground of *anticipation*, regard shall be had by Mr. Speaker to the probability of the matter anticipated being brought before the House within a reasonable time.

The Anticipation rule, which forbids discussion of a matter standing on the Paper being forestalled, is dependent on the same principle as that which forbids the same question being twice raised in the same session. In applying the Anticipation rule, preference is given to the discussions which lead to the most effective result, and this has established a descending scale of values for discussions—Bills, Motions, Amendments, etc. Thus a Bill must not be anticipated by (or more shortly “block”) discussion of a motion, amendment, or subject raised on another motion. Any substantive motion standing on the Paper blocks the discussion of an amendment, etc. An amendment on the Paper blocks the raising of its subject in debate. The abuse of blocking motions is obviated by the direction given to the Speaker to have regard to the probability of the matter anticipated being brought before the House within a reasonable

time. C. 152-3. Can. C.J., Vol. LXXIV, p. 67; Can. Deb. 1936, p. 372; *Ib.* 1936, p. 442.

**132.** It would not, perhaps, be practicable, to lay down any very precise and definite rules, as to the occasions on which the duty of the Speaker requires his interference; but, from the language of eminent and experienced speakers, it may be gathered that, where subjects are brought under consideration, in which members feel deeply interested, or where members are speaking under the excitement of great warmth of feeling, in which circumstances expressions are likely to escape them in the heat of debate, which, though personal and offensive in their terms, are not, perhaps, intended to be personally offensive—it is not the duty of the Speaker to nicely measure and weigh every expression that may chance to be used; or to lay hold of particular expressions and give them a meaning with which they were not intended to be applied, and in which they possibly may not have been understood; or, by interfering in a trifling matter, to give it more importance than it deserves; or to understand equivocal expressions in an offensive and personal sense; or, in general, to interfere at all, unless he feels strongly that some personal disrespect is intended. (Cush. No. 1692.)

**133.** When the Speaker takes notice of any expression as personal and disorderly, and tending to introduce heat and confusion, and calls upon the offending member to explain, it is the duty of the latter immediately to explain or retract the offensive expressions, and to apologize to the House for the breach of order, in terms large and liberal enough both to satisfy the House, and the member of whom the offensive expressions were used. The Speaker's demand usually produces the required explanation, at once; if not, the Speaker then repeats the call for explanation, and informs the member, that if he does not immediately respond to it, it will become the duty of the chair to name him to the House; if the member should still refuse, the Speaker would then name him to the House; upon which proceedings would immediately ensue for the purpose of censuring or punishing such member for his disorderly conduct. Eng. Hans. (3), XXII, 115, 116, 117, 118.

**134.** (1) In case a member persists in using unparliamentary language, the Speaker will be compelled to name him, which is equivalent to submitting his conduct to the judgment of the House. The member should then explain and withdraw, and

it will be for the House to consider what course to follow in reference to him. If the explanation is deemed sufficient, some member will move that it be accepted. In case the offending member does not explain and persists in remaining in the House, a motion shall forthwith be made, preferably by the leader of the House, "that Mr. . . . member for . . . be suspended for . . . days from the service of the House." If the offender does not then obey the order to retire, the Sergeant-at-Arms will come up to him and touch him on the shoulder. If he still resists, the Sergeant-at-Arms sends for his constables and several of them will appear to help. Whatever force required will then be used. When the member has withdrawn, the House may consider his case. A motion—not debatable—may be moved that he be called in and reprimanded by Mr. Speaker; but suspension may be considered sufficient without the necessity of a reprimand. Any member may apologize to the House on behalf of the offender, but if the House agrees that the latter should be reprimanded, he will be directed to attend in his place at a particular time, and when he is there, the Speaker will request him to stand up, and proceed to reprimand him. In all cases, every proper opportunity should be given an offending member to make such a defence as may satisfy the House and avoid a reprimand. If the member has been named by the Chairman in a Committee of the Whole, the Chairman forthwith suspends the proceedings of the Committee and reports the circumstances to the House, which deals with the matter as above stated.

(2) In the House of Commons a member will not be permitted by the Speaker to indulge in any reflections on the House itself as a political institution; or to impute to any member or members unworthy motives for their actions in a particular case; or to use any profane or indecent language; or to question the acknowledged and undoubted powers of the House; or to reflect upon, argue against or in any manner call in question the past acts and proceedings of the House, or to speak in abusive and disrespectful terms of an Act of Parliament. (B. 360-361.)

**135.** (1) Note that under Standing Order 30, the member shall withdraw during the time a matter touching his conduct is in debate. If another question is taken up, he may resume his seat, but if his case is referred to a committee, it is proper that he should stay out of the House until a report be made



and the matter disposed of. The practice is to permit him to learn the charge against him, and, after being heard in his place, for him to withdraw from the House. When the charge is founded upon reports, petitions or other documents, it is usual to have them read and for the member to withdraw before any question is proposed. If the member should neglect or refuse to withdraw, a motion should be made "that Mr. . . . do now withdraw."

(2) Unparliamentary language offending against the proprieties of the House, when the Speaker is in the Chair, cannot be withdrawn in Committee of the Whole. C.J. Vol. 74, p. 281.

**136.** On the 24th of July 1944, in Committee of the Whole on Bill 161 to provide for Family Allowances, Honourable Dr. Bruce, M.D., L.R.C.P. (London), F.R.C.S. (England) F.A.C.D., former lieutenant-governor of Ontario, member for Parkdale, said: "I now declare that this measure is a bribe of the most brazen character made chiefly to one province and paid for by the taxes of the rest". The Chairman asked him to withdraw that statement; Dr. Bruce refused and added: "I think it is going a long way to stretch the rules of the House. I have always been willing to abide by the rules of the House. I make no reflection on any member of the House. They are entitled to vote as their conscience dictates. I regarded this measure as a bribe and I still regard it as a bribe. I have said so and I will not retract that statement." The Chairman said: "When the honourable member made the statement that this measure is a bribe it does not in my opinion reflect on all honourable members who have supported the motion. I do not think the honourable member wants to cast a reflection and I do hope that he will withdraw that insinuation". Mr. Bruce replied: "I have already said that I made no reflection and intend to make no reflection on any honourable member". The Chairman said: "I think the honourable member has intimated that he does not wish to cast a reflection, but he added: "I am going to ask that the honourable member make a withdrawal of the words he used, realizing that they were unparliamentary". Mr. Bruce: "Mr. Chairman, I must appeal from your ruling; I regret to say that I will not withdraw the statement I made. I made that statement as against this measure and I maintain that I had a perfect right to make it, and I stand by it". Mr. Speaker took the Chair and received from the Chairman of the Committee a report of what had taken place. Whereupon

Mr. Speaker put the question: "Shall the ruling of the Chairman be confirmed?" The House divided as follows: yeas 81, nays 22. Thereupon, the Speaker said "Under circumstances which are very painful to the House I would ask the honourable gentleman if he would withdraw his remark". Mr. Bruce: "Mr. Speaker, I regret to say that I cannot and will not withdraw my remark". Mr. Speaker: "I must therefore ask the honourable member if he will withdraw from the chamber until the House decides what it will do". Mr. Bruce having left the Chamber, the Leader of the House moved: "That Mr. Bruce, member for Parkdale, be suspended from the service of this House for the remainder of to-day's sitting." The motion carried on a division of 84 to 20.

Mr. Bruce had said that he made no reflection on any member, and the Chairman agreed with him on that point. Nevertheless the Chairman expressed "the hope" that the statement which he called an "insinuation" be withdrawn. The House seems to have acted rather severely; and it is to be hoped that the decision then given will not be followed in future as a precedent.

**137.** When a member against whose conduct a complaint was made, had been heard and had withdrawn, on the expression of a desire that he might return to the House whilst a rejoinder was made to his explanation, the Speaker sanctioned his return to his place, until the consideration of his conduct was commenced by the House. A member not yet adjudged guilty of contempt may return to his place, when debate on his conduct has been adjourned. 317 H.D. 3s, 1633-1638; 235 ib. 1815, 1833.

**138.** (1) The House of Commons will insist upon all offensive words being withdrawn, and upon an ample apology being made which shall satisfy both the House and the member to whom offence has been given. If the apology be refused, or if the offended member declines to express his satisfaction, the House takes immediate measures for preventing the quarrel from being pursued further, by committing both members to the custody of the Sergeant, whence they are not released until they have submitted themselves to the House and given assurance that they will not engage in hostile proceedings. M. 298, 299.

(2) If offensive words are spoken in Committee, which are taken down, the House only, and not the Committee, can take

notice of them. The Committee therefore reports progress and asks leave to sit again; the Chairman reports the words used to the Speaker, who says: "It has been reported to the House that the honourable member for . . . has used the following words: . . . Has the honourable member anything to say in explanation or retraction of these words?" The member will then give his explanation and withdraw. If the explanation is not satisfactory, the leader of the House may move: "That the words used by the honourable member for . . . be taken into consideration at the next sitting of the House." If the House is ready to deal with the matter at once, the leader of the House may make immediately whatever motion he thinks the circumstances justify, such as suspension for the remainder of the sitting or for a few days. Eng. Hans. 3s., Vol. 126, pp. 1207 to 1209.

**139.** If such is the sense of the House, the Speaker may direct the Clerk to take down unparliamentary words to which objection has been taken. If a member desires that the words be taken down, he must repeat them and state them to the House exactly as he conceives them to have been spoken. But if the Speaker sees the objection to be a trivial one, he will prudently delay giving such direction. If, however, the call to record the words should be pretty general, the Clerk will certainly be ordered by the Speaker to take them down in the form and manner of expression as they are stated by the member who makes the objection to them. It will be too late to interrupt the member and ask that his words be taken down if he is allowed to continue his speech for some time after he has given utterance to the objectionable language. The objection must be raised immediately that the words are spoken. The member may then deny that those were the words he spoke, and if he does so, the House may proceed to consider his explanation and decide by a question whether he had or had not used the words. If he does not deny that he spoke those words, or when the House has itself determined what the words were, then the member may either justify them or explain the sense in which he had used them with the view of removing the objection taken to them. If his explanation be deemed sufficient by the House, no further proceeding is necessary. Or the House may feel compelled to resolve that the words are most disorderly, and proceed to censure him. Or the House may resolve that the words are not disorderly by negating the motion to censure

the member. Or the House may go still further and order the offending member to be committed to the custody of the Sergeant-at-Arms. When the words have been taken down at the Table, the member should explain and withdraw, and the House will proceed to consider what course to take in reference to him. Sometimes the House may be disposed to allow every indulgence to a member who, in the heat of debate, has allowed expressions to escape him which are calculated to offend the House or some member thereof. Failing the tender of explanation or apology, the House will not deal immediately with the matter, but will order that it be taken into consideration at a future time, and that the member do attend in his place at the same time. When the Orders of the Day, for the consideration of the words objected to and for the attendance of the member, have been read, the Speaker will ask if he is in his place, and proceed to explain the state of the matter, and give him a further opportunity for an apology. B. 369, 370, 371, 372.

**140.** (1) "The rule relating to personal reflections occurring in debate, may be stated thus, namely: that it is doubly disorderly for any member, in speaking, to digress from the question before the House, and to attack any other member, by means of opprobrious language, applied to his person and character, or to his conduct, either in general, or on some particular occasion, and tending to bring him into ridicule, contempt, or hatred, with his fellow-members, or to create ill blood in the House." (Cush. No. 1677.)

(2) "The whole law of Parliament on this subject is admirably summed up and expressed in the following Standing Order of the Lords: "To prevent misunderstanding, and for avoiding offensive speeches, when matters are debating, either in the House, or at committees, it is for honour's sake thought fit, and so ordered, that all personal, sharp, or taxing speeches be forborne; and whoever answereth another man's speech shall apply his answer to the matter without wrong to the person; and as nothing offensive is to be spoken, so nothing is to be ill taken, if the party that speaks it shall presently make a fair exposition, or clear denial, of the words that might bear any ill construction; and if any offence be given in that kind, as the House itself will be very sensible thereof, so it will sharply censure the offender, and give the party offended a fit reparation, and full satisfaction." (Cush. No. 1679.)

**141.** (1) "It is impossible to lay down any specific rules, in regard to injurious reflections uttered in debate against particular members, or to declare beforehand, what expressions are or are not contrary to order; much depends upon the tone and manner, and intention, of the person speaking; sometimes upon the person to whom the words are addressed, as, whether he is a public officer, or a private member not in office, or whether the words are meant to be applied to his public conduct, or to his private character; and sometimes upon the degree of provocation, which the member speaking had received from the person he alludes to; and all these considerations must be attended to at the moment, as they are infinitely various and cannot possibly be foreseen in such a manner that precise rules can be adopted with respect to them.

"When the Speaker observes upon any expression as personal and disorderly, and tending to introduce heat and confusion, and this appears to be the general sense of the House, the member offending ought immediately to make an apology, and to ask pardon of the House for this breach of their order, in as large and liberal expressions as possible, so as in such apology, to comprehend the person of whom the words were used."

(2) All the rules for maintaining the order of business, and securing a peaceful course for the deliberations of the House are firmly based upon its jurisdiction over its own members, which, to a certain point, is looked upon as absolute. Such a jurisdiction has from time immemorial been inherent in the Parliament of England. The disciplinary power of the Speaker only extends to his regular function of maintaining order in debate. The penal jurisdiction of the House has, however, always extended far beyond the bounds of debate, and in certain directions the House claims unlimited power over the person of its members. This primary jurisdiction is only used by way of supplement to the powers exercised by the Speaker for the protection of the proceedings.—Red.

**142.** As all matters relating to National Defense had been placed in charge of several ministers of the Crown during the war, each minister at the head of a department dealing with such matters was allowed to speak in reply for more than forty minutes when an amendment to the Address, in relation to the War effort was before the House. H. of C., Can. Deb. Nov. 15, 1945 C.J.

A member who, during a debate, has spoken to a question may again be heard to offer explanation of some material part of his speech which has been misunderstood; but he must not introduce new matter or endeavour to strengthen by new arguments his former position which he alleges to have been misunderstood, or to reply to other members. Here, again, a greater latitude is permitted in cases of personal explanation, where a member's character or conduct has been impugned in debate. The proper time for explanation is at the conclusion of the speech which calls for it; but it is a common practice for the member desiring to explain to rise immediately the statement is made to which his explanation is directed, when, if the member in possession of the House gives way and resumes his seat, the explanation is at once received; but the explanation cannot then be offered if the member speaking declines to give way. M. 313-4. Can. Deb. 1936, p. 90.

**143.** (1) Whilst a member is addressing the House, no one has a right to interrupt him by putting a question to him, or by making or demanding an explanation. A member will, at times, allow such interruptions through a sense of courtesy to another, but it is entirely at the option of the member in possession of the floor to give way or not to an immediate explanation.

(2) There are words of interruption, which, if used in moderation, are not unparliamentary, but when frequent and loud, cause serious disorder, such as the cries of "question", "order, order", "hear, hear", or "divide", which have been sanctioned by long parliamentary usage. They may be used for very different purposes, and instead of implying approbation, they may express dissent, derision or contempt.

**144.** It is a rule in both Houses of Parliament that a member must address the House orally, and not read from a written, previously prepared speech, for the reason that, "if the practice of reading speeches should prevail, members might read speeches that were written by other people, and the time of the House be taken up in considering the arguments of persons who were not deserving of their attention."

Mr. Speaker Glen said in the House on February 20th, 1942:

"I have a statement I should like to make to the House. Now that the debate on the Address has been completed, I

have been concerned with what I am sure has been evident to all members of the house, namely, the breach of the rule which deals with the reading of speeches. I would refer honourable members to Beauchesne's Parliamentary Rules and Forms, at page 95, citation 293, which states:

Besides the prohibitions contained in this Standing Order, it has been sanctioned by usage both in England and in Canada, that a member, while speaking, must not:

(o) read from a written, previously prepared speech.

"As long ago as April 19, 1886, a resolution was adopted by the House, which reads:

That the growing practice in the Canadian House of Commons of delivering speeches of great length, having the character of carefully and elaborately prepared written essays, and indulging in voluminous and often irrelevant extracts, is destructive of legitimate and pertinent debate upon public questions, is a waste of valuable time, unreasonably lengthens the sessions of Parliament, threatens by increased bulk and cost to lead to the abolition of the official report of the debates, encourages a discursive and diffuse, rather than an incisive and concise style of public speaking, is a marked contrast to the practice in regard to debate that prevails in the British House of Commons, and tends to repel the public from a careful and intelligent consideration of the proceedings of Parliament.

"During the course of the debate, members have been reading from manuscripts without regard to the rule, and all sides of the House have practised it. I think that I express the general sense of the House when I say that this practice is to be deplored. It is true that the debate just completed was very important, as honourable members are likely to be quoted thereafter for their attitude now, and in consequence, they wish to have the written word before them, rather than rely on the inspiration of the moment to find the proper expressions. I wish to intimate to the House that I shall have to insist upon members observing the rule. I realize the difficulty of enforcing it and the Chair can only do so with the positive support of all members.

"On a former occasion I agreed, and the House consented, that when important statements involving government policy are made by ministers on behalf of the Government, such statements could be read rather than expressed extemporaneously. This practice is, I understand, being followed in the British

House of Commons and it has been extended here to include statements made by the official leader of the Opposition, whose status is regulated by the Senate and House of Commons Act."

**145.** It has been formally ruled by Speakers in the Canadian Commons that a statement by an honourable member respecting himself and peculiarly within his own knowledge must be accepted, but it is not unparliamentary to temperately criticize statements made by a member as being contrary to the facts; but no imputation of intentional falsehood is permissible. B. 352, 365. A statement made by a member in his place, is considered as made upon honour and cannot be questioned in the House or out of it. (Shaw-Lefebvre Decisions, p. 124.)

**146.** It is the custom in both Houses that no member should refer to another by name. In order to guard against all appearance of personality in debate, members should be referred to in the third person as, "the honourable member for—says or contends, etc." A minister should be designated by the portfolio he holds in the Government as "the honourable minister of". It is usual to refer to the chiefs of the two main parties as, "The Prime Minister" and "The Leader of the Opposition". When a member belongs to the Imperial Privy Council, courtesy demands that he be styled in the House as "The Right Honourable Gentleman".

**147.** (1) Allusion to debates in the other House are out of order, and there are few orders more important than this for the conduct of debate and for observing courtesy between Houses. 151 H.C. Deb., 5s., 2207.

(2) Nor is a member allowed to refer to a speech made in committee of the whole House. This rule, however, does not apply to debates upon different stages of a Bill.

**148.** (1) It is a wholesome restraint upon members that they cannot revive a debate already concluded; and it would be little use in preventing the same question from being offered twice in the same session if, without being offered, its merits might be discussed again and again. 78 H.D. 3s, 137, 231; ib. 749.

(2) It is irregular to reflect upon, argue against, or in any manner call in question, in debate, the past acts or proceedings of the House, on the obvious ground that, besides tending to



revise discussion upon questions which have already been once decided, such reflections are uncourteous to the House and irregular in principle inasmuch as the member is himself included in and bound by a vote agreed to by a majority; and it seems that, reflecting upon or questioning the acts of the "majority" is equivalent to reflecting upon the House. (C. 1740.)

(3) Reference to debates of the current session is discouraged even if such reference is not irrelevant, as it tends to re-open matters already decided. The same result is often obtained by indirect methods. Direct reference is permitted, however, when a member wishes to complain of something said or to clear up misrepresentation or make a personal explanation, but only such of the previous speech should be brought up as is necessary for such purposes.

**149.** Besides the prohibitions contained in Standing Order 35; it has been sanctioned by usage both in England and in Canada, that a member, while speaking, must not:

- (a) refer to any debate of the same session on any question not then under discussion; nor
- (b) refer to any debate in the Senate, but he may refer to the official printed records of the Upper House, though they have not been formally communicated to the Lower House; nor
- (c) refer to any matter on which a judicial decision is pending; nor
- (d) anticipate discussion on a motion set down for future consideration; nor
- (e) refer to any member by name; nor
- (f) make a personal charge against a member; nor
- (g) use the King's name for the purpose of influencing a debate; nor
- (h) utter treasonable or seditious words; nor
- (i) use his right of speech for the purpose of obstructing business of the House; nor
- (j) cast reflections upon the conduct of Judges of Superior Courts, unless such conduct is based upon a substantive motion; nor
- (k) reflect upon the past acts and proceedings of the House; nor
- (l) read from a printed document or book commenting on any speech made in Parliament during the session; nor

- (m) discuss messages or reports which are not regularly before the House; nor
- (n) read petitions referring to debates in the House; nor
- (o) read from a written, previously prepared speech.

**150.** If a member should say nothing disrespectfully to the House or the Chair, or personally opprobrious to other members, or in violation of other rules of the House, he may state whatever he thinks fit in debate, however offensive it may be to the feelings, or injurious to the character, of individuals; and he is protected by his privilege from any action for libel, as well as from any other question or molestation. M. 107.

**151.** Treasonable or seditious language or an irreverent use of His Majesty's name would be rebuked by any subject out of Parliament; and it is only consistent with decency that a member of the Legislature should not be permitted openly to use such language in his place in Parliament. Members have not only been called to order for such offences, but have been reprimanded, committed to the custody of the Sergeant or even sent to the Tower. M. 320.

**152.** (1) References to the Commissioner of Taxation of the nature of personal attack or censure are unparliamentary. This rule applies to any civil servant whose public actions may be unreservedly criticized but whose private conduct is not amenable to Parliament unless it is so obnoxious that it interferes with his public duties, and then it can only be brought to the attention of the House by means of a resolution after forty-eight hours' notice.

(2) The Board of Railway Commissioners is a court of record and therefore may not be attacked except by way of impeachment. Can. Deb. 1928, p. 3106.

(3) Matters which have been adjudicated upon by the Railway Commissioners and taken in appeal to the Governor-in-Council cannot be considered *sub-judice* while the appeal is pending, because the Governor-in-Council then acts in an administrative and not a judicial capacity, and therefore such matters may be debated in the House of Commons. (Can. C.J., Vol. LX, p. 268.)

(4) All references to judges and courts of justice and to personages of high official station, of the nature of personal attack and censure, have always been considered unparliamentary.

tary, and the Speakers of the British and Canadian Houses have always treated them as breaches of order. Members have even been interrupted in Committees of the Whole by the Chairman when they have cast an imputation upon a judicial proceeding. The proper course for persons who feel called upon to attack the conduct of a judge is to proceed by way of a petition in which all the allegations are specifically stated so that the person accused may have full opportunity to answer the charges presented against him. B. 358, 359.

**153.** The reference of a Bill to the Supreme Court of Canada withdraws that Bill temporarily from the jurisdiction of Parliament. On April 12, 1948, the Prime Minister moved that a select committee be set up to consider, *inter alia*, what is the legal and constitutional situation in Canada with respect to human rights and fundamental freedoms. Mr. Diefenbaker moved in amendment that, in order to assist the committee, the government submit immediately, to the Supreme Court of Canada such questions as are necessary to determine to what extent the preservation of the fundamental freedoms of religion, speech, press, assembly and the maintenance of constitutional safeguards of the individual are matters of federal jurisdiction. The Speaker said: "This amendment actually proposes that the Supreme Court be asked to consider the same matter that the main motion proposes to refer to a select committee. It seems to me that both those propositions cannot be approved at the same time by the House. If the constitutional situation of human rights is submitted to the Supreme Court it thereby becomes *sub judice* and cannot be considered by the Committee until the Court has given its decision. The question cannot be before two public bodies at the same time. For this reason I feel bound to rule the amendment out of order". C.J., Vol. 84, p. 344.

**154.** (1) Threatening language is also unparliamentary. When a member has intimated that he would move the adjournment unless certain explanations were given, the Speaker has interposed and called him to order for using language menacing to the House. B. 364.

(2) Words may not be used hypothetically, or conditionally, if they are plainly intended to convey a direct imputation. Putting a hypothetical case is not the way to evade what would be in itself disorderly. B. 364.

(3) The imputation of bad motives, or motives different from those acknowledged, misrepresenting the language of another, or accusing him, in his turn, of misrepresentation, charging him with falsehood or deceit; or contemptuous or insulting language of any kind; all these are unparliamentary and call for prompt interference. M. 297.

(4) It is not out of order to say that a member has obstructed the business of the House, or that a speech is an abuse of the rules of the House. 308 H.D. 3s. 1170; 125 Parl. Deb. 4s. 945; 6 H.C. Deb. 5s. 2046.

(5) It is not unparliamentary to say that a statement is untrue, but it is unparliamentary to say that it was untrue to the knowledge of the member addressing the House. H. of C. Can. Feb. 18, 1915; C.J., Vol. 63, p. 382.

(6) The words "purchased by legislation" applied to a member of the House are unparliamentary. An appeal was taken from this decision of Speaker Lemieux who was sustained by a vote of 87 to 71. C.J., Vol. 63, pp. 75-76.

(7) It is a well-known principle that a statement made in this House cannot be contradicted by a statement made by a person who is not a member of the House. Can. Deb. 14th Feb., 1938, p. 382.

**155.** (1) It will be useful to give examples here of expressions which are unparliamentary and call for prompt interference. These may be classified as follows:

1. The imputation of false or unavowed motives.
2. The misrepresentation of the language of another and the accusation of misrepresentation.
3. Charges of uttering a deliberate falsehood. The word "calumnious" has generally been held to be in order.
4. Abusive and insulting language, e.g.: "Villains", "impertinence", "rude remarks", "gross calumny", "impudence", "ruffianism", "hypocrites", "pharisees", "murderer", "hooligan", "blackguard", "traitor", "charges of treason", "That a member ought to have been imprisoned for high treason", "alleging that a member's statements were not 'consonant with personal honour'", "malignant slander", "scurrilous", "dishonest", "vicious and vulgar", "criminal", "corrupt", "That a member has been detected in the grossest practice of corruption", alleging "that a member was re-

turned by the refuse of a large constituency", "cad or cad-dishness", "insulting dog", "description of a member's speech as 'blather' ", "lie down, dog", "behaving like a jack-ass", "swine", "cheat", "stool-pigeons". M. 15th ed. 439.

(2) Bourinot (p. 361) gives the following example of unparliamentary phrases:

No member will be permitted to say of another:

that he could expect no candour from him;

that he only affected to deplore the distresses of the country;

that his remarks are insulting to the House and to the country;

that he is in the habit of uttering libels in the House;

that he is guilty of gross misrepresentations;

that he has acted basely and from base motives;

that he is observed indulging in a smile unworthy of a man;

that the House has a right to know whether a member meant what he said or knew what he meant.

(3) No member can be allowed to attribute any intention to insult others; or

to question the honour of one; or

to tell a member that he went about the country telling palpable lies; or

that certain members would shrink from nothing, however illegal or unconstitutional; or

that members came to the House to benefit themselves; or

that liberty and regard to private right are lost to the House; or

that a Minister has transferred himself from a constitutional Minister into a tyrant; or

that a Minister has stated what he knew not to be correct; or

that he does not believe a statement he himself has made; or

that he had inspired another member in a certain disorderly course which had brought down the censure of the House; or

that he shelters himself behind his temporary privilege to evade a criminal action.

Nor may he refer derisively to another member:

as the member "who sits" for a constituency; or

say that he sits for his constituency by the grace of the leader of the government; or

that he is a servile follower of the government; or that a member has taken a course unworthy of a Minister, unworthy to be listened to by any men of honour in this House.

**156.** The proper time for interference is when the offensive expressions are uttered, and not afterwards; and it may take place, either on the Speaker's voluntary motion, or on the call to order of the member assailed, or of some other member, or the general call of the House." (Cush. No. 1691.)

The Speaker feels more strongly his duty to interpose and check language which seems unparliamentary with regard to an absent member.

**157.** (1) The practice of reading extracts from newspapers to support an argument in debate has been followed in the British House since 1840, when Speaker Peel, with the acquiescence of the House, allowed a member to proceed to read passages from a newspaper. In 1856, when a member was called to order for reading an extract from a newspaper, the Speaker stated that on former occasions when he had attempted to enforce this rule, he had been overruled by the House. A similar statement was made by the Chairman in Committee on the 9th March, 1857. (May, 317-18.)

(2) Speaker Brand decided on June 3rd, 1878, and his decision seems to have settled the point, that a member is not out of order in reading a newspaper article on which he proposes to found a motion. (Denison's & Brand's Decisions, p. 145.)

(3) It is out of order to read extracts in a debate if they:

- (a) refer to other debates during the same session, or to any question not under discussion, (May, 317-18) (Bourinot, 336);
- (b) reflect upon any proceedings or any determination of the House, (S.O. 35);
- (c) contain unparliamentary expressions, as no language can be heard in quotation if it would be disorderly if spoken, (Bourinot, 336);
- (d) refer to, comment on, or deny anything said by a member, (Bourinot, 336);
- (e) allude to debates in the other House of Parliament, (May, 316);
- (f) utter treasonable or seditious words, or use the King's name irreverently, (S.O. 35);
- (g) use the King's name to influence debate, (May, 316);
- (h) use offensive or insulting language against the character of proceedings of the other House, (S.O. 35);
- (i) refer to matters pending a judicial decision, (May, 316);
- (j) reflect upon the conduct of persons in authority, (May,

316); (k) make personal allusions derogatory to members, (May, 316).

(4) Bourinot, page 335, refers to these objections when he says a member may read extracts from documents, books, or other printed publications as part of his speech, *provided in so doing he does not infringe upon any point of order*.

(5) It is not in order to read articles in newspapers, letters or communications emanating from persons outside the House and referring to, or commenting on, or denying anything said by a member or expressing any opinion reflecting on proceedings within the House.

(6) On the 17th March, 1933, a member quoting a newspaper in debate was ruled out of order by the Deputy Speaker who said: "The rule is quite clear, that the quoting of a newspaper, an author or a book which reflects upon debate before the House, either directly or indirectly is entirely out of order, because members are here to give their own opinion and not to quote the opinion of others. . . . Members may quote an article or a book stating facts, but a commentary on any proceeding or any discussion in the House, with the object of swinging an opinion to one side or the other, is out of order." Can. Deb. 1932-33, Vol. 3, pp. 3103-4.

(7) When a complaint is made of a newspaper, it is the practice in the House of Commons of Canada for the member to rise on a question of privilege and point out that he has been libelled or misrepresented. He may read as much of the article as is necessary to prove his case but he cannot go farther. He is bound to confine himself strictly to the question of privilege. Can. Deb. 1933, p. 3729.

(8) A member having made assertions in speeches out of doors, relative to other members, and having repeated them in the House: *Decided*, that the proper way of proceeding with a view to ulterior measures was for the newspaper containing the expressions in question to be read by the Clerk at the table and for the admission by the member in question that he used them to be taken in a formal manner. (Parliamentary Precedents, 142.)

**158.** (1) It is out of order to refer to anything said out of the House on the subject of what has taken place within the House. (Idem, 125.)

(2) A member cannot read a letter referring to anything that has taken place in a debate in the House. (*Idem*, 135.) *Ib.* October 1932, pp. 438; 668. *Ib.* November 1932, p. 1233.

(3) An unsigned letter should not be read in the House. On the 16th May 1928, a member stated during debate that a letter which he had been quoting was not signed. The Speaker said: "Such a letter should not be read into Hansard; all letters when read must be signed and they become part of the documents of the House." *Can. Deb.* 1928, p. 3073.

(4) It is against the general principles which govern debate to read to the House an imaginary letter supposed to have been written by one of the sitting Members of Parliament. (*H.C. Deb.*, Vol. 9, p. 3260.)

(5) A member cannot read before the House documentary evidence and letters relating to a charge referred on a previous occasion to a Select Committee for investigation. This would be bringing into the House for discussion evidence that must come from the committee in support of the charge. (*Can. C.J.*, Vol. 6, p. 349.)

**159.** (1) Reference to a public document in the possession of a committee which is not taking action on it is not irregular, but reference to the proceedings of a committee or the evidence heard by the committee cannot be made in the House before the committee has presented its report. *C.J.*, Vol. 43, pp. 388-9.

(2) A Minister of the Crown is not at liberty to read or quote from a despatch or other state paper not before the House, unless he be prepared to lay it upon the table. This restraint is similar to the rule of evidence in courts of law, which prevent counsel from citing documents which have not been produced in evidence. The principle is so reasonable that it has not been contested; and when the objection has been made in time, it has been generally acquiesced in. *M.* 328-9.

(3) It has been admitted that a document which has been cited ought to be laid upon the table of the House, if it can be done without injury to the public interest. The same rule, however, cannot be held to apply to private letters or memoranda. On the 18th May, 1865, the attorney-general, on being asked by Mr. Ferrard if he would lay upon the table a written statement and a letter to which he had referred on a previous day, in answering a question relative to the Leeds Bankruptcy Court, replied that he had made a statement to the House upon his own responsibility, and that the documents he had referred



to being private, he could not lay them upon the table. Lord Robert Cecil contended that the papers, having been cited, should be produced; but the Speaker declared that this rule applied to public documents only. M. 329.

(4) Official papers quoted during a Debate should be laid on the Table of the House. Mr. Patterson, Member for the Electoral District of Essex, and Mr. Cockburn, Member for the Electoral District of Northumberland, having, in the course of the Debate on a motion for an Order of the House and the amendment thereto, read extracts from certain official papers in their possession, and relating to the question under consideration, Mr. Mackenzie raised the point of order that official papers, when cited by an Honourable Member, ought to be laid on the Table of the House. Mr. Speaker ruled: "That the point of order was well taken, and that the papers cited by the Honourable Members for Essex and Northumberland should be placed in the possession of the House. (Can. C.J., Vol. 14, p. 201.)

(5) The point of order, that a member should lay on the Table a document which he quotes, should be taken when reference is made to the document. (Can. C.J., Vol. 34, pp. 238-9.)

**160.** Parliament does not appear to have any part to play in the matter of clemency which is a prerogative of the Crown that should not be interfered with by proceedings of the House of Commons while the subject is under consideration by His Excellency and his advisers. (Can. C.J., Vol. 53, pp. 158-9.)

**161.** Disallowance of provincial laws is not one of the functions of the Dominion Parliament. The fact that this subject is dealt with in Section 90 of the British North America Act and not in Section 91 shows clearly that the legislator did not intend to include it with the residue of powers vested in the Dominion Parliament. The only authority that can disallow provincial laws is the Governor-in-Council. As the Governor-in-Council is responsible to Parliament, the House of Commons may criticize the action taken by the Cabinet in cases of proposed disallowances, but a member cannot raise a debate on a provincial Act on the motion to go into Supply.

Since the only power enjoyed by our House of Commons in matters of disallowance is to criticize the action of the Dominion Government after it has either disallowed or refused to disallow a provincial Act, it follows that the House must

await Government action before taking the matter up. If the House considered the Act before the expiration of the one-year period during which Council must give its decision, it would exceed its own jurisdiction.

When the year within which disallowance may take place has expired, the Government's action or inaction may be discussed in the House of Commons. The practice usually followed has been to wait until the question of disallowance has been decided upon by the Government and then to move for the production of papers relating thereto.

The adoption of a resolution calling upon the Government to disallow a provincial Act would be an encroachment by the House of Commons on the powers of the Legislative Assemblies as set forth in Section 92 of the British North America Act. Such a resolution was moved in the Canadian House of Commons on the 15th of May, 1873, but it was severely criticized and never accepted as a precedent.

Lefroy, "Canada's Federal System", says, page 32: "Moreover the Dominion House of Commons cannot constitutionally interfere with the operation of provincial Acts by passing resolutions urging their disallowance by the Governor-General." And Lefroy quotes Lord Kimberley's dispatch of June 30th, 1873, saying that: "If such a resolution were allowed to have effect, it would amount to a virtual repeal of the section of the British North America Act, 1867, which gives the exclusive right of legislating on these matters to the provincial legislatures."

**162.** A resolution may be rescinded and an order of the House discharged, notwithstanding a rule urged, "that a question, being once made and carried in the affirmative or negative cannot be questioned again, but must stand as a judgment of the House." Technically indeed, the rescinding of a vote is the matter of a new question; the form being to read the resolution of the House and to move that it be rescinded; and thus the same question which had been resolved in the affirmative is not again offered, although its effect is annulled. M. p. 292.

To rescind a negative vote, except on the different stages of bills, is a proceeding of greater difficulty, because the same question would have to be offered again. The only means, therefore, by which a negative vote can be revoked, is by proposing another question, similar in its general purport to that which has been rejected, but with sufficient variance to constitute a new question, and the House would determine whether it were substantially the same question or not. M. 292. Upon

a motion which practically rescinded a resolution of the House, reference was permitted to the debate upon that resolution. M. 14th ed., p. 426-7.

Sometimes the House may not be prepared to rescind a resolution, but may be willing to modify its judgment by considering and agreeing to another resolution relating to the same object. Thus, a resolution having been agreed to which condemned an official appointment, the House by a subsequent resolution withdrew the censure which the previous resolution had conveyed. M. 294.

**163.** A mere alteration of the words of a question, without any substantial change in its object will not be sufficient to evade the rule that no question shall be offered which is substantially the same as one which has already been expressed in the current session. It is possible, however, so far to vary the character of a motion as to withdraw it from the operation of the rule. M. 295.

**164.** (1) The rule that Members are not to read books, newspapers or letters in their places must be understood with some limitations, for although it is irregular to read newspapers, any books or letters may be perused by Members preparing to speak. Considerable latitude is allowed about this rule in the Canadian Commons.

(2) Silence is required to be observed in both Houses. Members should converse only in undertones. (H.C. Deb. 1933-34, 399, c. 1153). Whenever the conversation is so loud as to make it difficult to hear the debate, the Speaker calls the House to order. Members are not to disturb a Member who is speaking either by hissing, singing, or exclamations or other interruption. Disorderly noises are sometimes made which, when members are impatiently waiting for a decision, it is scarcely possible to repress.

**165.** (1) The member who makes a motion may give the name of his seconder who will, if necessary, lift his hat as evidence that he had intimated his consent, and the seconder will then be allowed to speak on the question. But if the seconder should rise and say only a word or two,—for instance “that he seconds the motion,”—he is precluded from again addressing the House. B. 345.

(2) Having moved the adjournment of the debate, a member has spoken on the question and cannot make a second motion during the same debate. C.J., Vol. 25, p. 526.

(3) By moving or seconding an amendment a member, if he utters a few words, actually speaks to the main motion. It is only after the amendment has been put by the Speaker that it is considered a new question. See B. 346.

(4) A member who speaks in seconding an amendment is unable to speak again on the original question after the amendment has been withdrawn, or otherwise disposed of. B. 346.

(5) If a member does not speak in moving an amendment, he will be allowed to address himself to the main question by withdrawing his amendment. 217 E. Hans, 3, 1405.

(6) A member who has already spoken to a question has no right to propose an amendment, though he may speak to an amendment when moved by another member. B. 345, 346.

(7) A member who has already spoken to a question has no right to move an adjournment of the debate or of the House. B. 345, 346.

A member who has spoken on the main question cannot second a motion for the adjournment. E. Hans, 3s, pp. 309, 700 and 1620.

(8) A member who has moved or seconded the adjournment of the debate which has been negatived cannot speak to the original motion. Can. C.J., Vol. XXV, p. 526.

A member who has moved or seconded the adjournment of the debate cannot afterwards (during the same debate) rise to move the adjournment of the House. B. 346.

(9) After an amendment has been moved and seconded, the question on the amendment is proposed, and any member who speaks after that question has been proposed speaks to it and not to the main question. When the amendment has been disposed of and the main question is again proposed, any member can speak who has not already spoken on the main question, whether he spoke on the amendment or not. The mover and seconder of the amendment having spoken to the main question cannot speak again to it. The same rule applies, of course, to the case of an amendment to an amendment. The mover and seconder of an amendment are not penalized as compared with other members, because they speak both to the main question and the amendment which they are moving or seconding, in one speech.

(10) Every amendment is a question by itself, and a member who has spoken only on an amendment is entitled to speak on the main motion after the amendment is disposed of. C.J., Vol. 65, p. 154.

**166.** (1) It is plain, from section 2 of Standing Order 37 that a reply is only allowed to the mover of a substantive motion, but the House has extended this rule to the motion for the second reading of a Bill.

(2) When amendments are moved and voted on, the member who proposed the main motion is entitled to take his reply before the Speaker puts the final question: "shall the motion (or the motion amended, as the case may be) carry?"

(3) By a substantive motion is meant a motion not incidental to a proceeding before the House and which can be dealt with by amendment or by the distinct vote of the House. Man. No. 147. M. 248.

(4) If a member who moves an order of the day should rise and say only a word or two,—for instance, "that he moves the order,"—he is precluded from again addressing the House; except if the order of the day be a substantive motion or the second reading of a Bill, in which case he will be allowed a reply.

**167.** (1) If debate is on an amendment under closure, and a division takes place on that amendment before one o'clock in the morning, a new amendment may then be proposed, but the speeches thereon will be limited to one for each member who has not already spoken and shall not be longer than twenty minutes. A division may again take place on this new amendment, and another one be again proposed, and so on until one o'clock. The Government members, in order to prevent the Opposition from proposing such amendments, may keep up debate until one o'clock in the morning, when all questions connected with the main motion have to be decided forthwith.

(2) If a member has taken the floor at 12.55 o'clock, he is entitled to speak for twenty minutes, but no member "shall rise to speak" after one o'clock.

(3) Standing Order 33, which is the closure rule, is not exempt from the raising of points of order. There is not in it a single word denying a member's right to call the attention of the Speaker or Chairman to any irregularity which might spring up in the course of its operation. This Standing Order, within the scope of its restrictive provisions, must be dealt with according to the ordinary rules of procedure. A member is entitled to raise a point of order on any infringement at any time except when the Speaker or Chairman is addressing the House. The point may be overruled and may sometimes con-

stitute a misuse of a parliamentary privilege, but it cannot be adjudged by the chair until the member has first been heard.

(4) The phraseology of Standing Order 33 shows that closure was imposed on the House of Commons as a check on protracted discussions. It provides that a minister who has previously given notice of his intention may move that the debate shall not be "further" adjourned, or, in Committee of the Whole, that "further" consideration of resolutions clauses, preamble or titles shall not be further postponed and, at one o'clock in the morning, these questions shall be decided forthwith. Note the emphasis of the word "further" in this rule. If, under this Standing Order, the notice applies to several proposed resolutions, the whole of the sittings allowed for discussion may be engaged in only a part of them and the remainder has to be voted on without the House having debated them at all. The right of free debate is thereby abolished in so far as those proposed resolutions are concerned.

(5) The House therefore should be chary in applying closure to matters which have not been and may not be debated. Standing Order 33 must be interpreted as meaning that the House did not intend to impose closure on any Bill or motion that had not been previously discussed. The ending of protracted debate, not its abolishment, was the main reason why closure was established.

**168.** The debates of the House of Commons are reported *verbatim* by a very efficient staff of stenographers chosen with care and appointed by the Civil Service Commission. They are printed in bound volumes after every session. The Chief of the Staff is styled "Editor of Debates". This service is under the Clerk's authority as provided in Standing Order 83 which says that the Clerk of the House "has the direction and control over all the officers and clerks employed in offices, subject to such orders as he may from time to time receive from Mr. Speaker or the House." The Editor must obtain an absolutely correct report of what was said by a Member in the House. Slight verbal alterations are allowed in order to make the meaning precise and accurate, but Members may not, by the insertion of words or phrases, effect material changes in the meaning of what they actually said in the House. The House, having control of its own records should, before any statements are expunged from the official reports of debates, pass a resolution to that effect. (Speaker Black, April 13, 1933.)

## CHAPTER IV

### ADDRESS IN REPLY TO HIS EXCELLENCY'S SPEECH

#### STANDING ORDER

38. (1) The proceedings on the order of the day for resuming debate on the motion for an address in reply to His Excellency's speech and on any amendments proposed thereto shall not exceed *ten* sitting days.

(2) Any day or days to be appointed for the consideration of the said order shall be announced from time to time by a Minister of the Crown and on any such day or days this order shall have precedence of all other business except the ordinary daily routine of business.

(3) On the *sixth* of the said days, if a subamendment be under consideration at *fifteen* minutes before the ordinary time of daily adjournment, Mr. Speaker shall interrupt the proceedings and forthwith put the question on the said subamendment.

(4) On the *ninth* of the said days, if any amendment be under consideration at *thirty* minutes before the ordinary time of daily adjournment, Mr. Speaker shall interrupt the proceedings and forthwith put the question on any amendment or amendments then before the House.

(5) On the *tenth* of the said days, at *thirty* minutes before the ordinary time of daily adjournment, unless the said debate be previously concluded, Mr. Speaker shall interrupt the proceedings and forthwith put every question necessary to dispose of the main motion.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**169.** It is a mistake to believe that the debate on the Address in reply to the Speech from the Throne allows members to raise all kinds of issues on the mere ground that they relate to the general situation of the country. In the times of Sir John A. Macdonald and Honourable Alexander McKenzie, considerable restriction was placed on that debate. Speaking on the Address in the session of 1875, Sir John A. Macdonald expressed the following opinion: "The practice of discussing the Speech from the Throne at great length and of raising endless issues upon it was simply an obstruction to business. It was his opinion that, unless the Opposition were in a position to move a vote of want of confidence in the Government, which he candidly confessed they were not in a position to do on this occasion, the Address should be passed without delay." (Debates, 1875, p. 12). Honourable Mr. McKenzie, speaking on the Address, in 1878, said: "I quite admit that on this occasion free comments may be made upon ministerial utterances in the Speech from the Throne, although it is now and has been the practice for many years so to construct that document that there shall be nothing which will necessitate, on the part of the Opposition, the moving of any amendment. It has been thought desirable in our parliamentary practice that it is better to postpone debates upon specific subjects of discussion in the House until those matters are brought forward before us by a Bill or Resolution, and I am glad to know that the honourable gentleman admits that the speech has been constructed this time fairly in that respect." (Debates, 1878, p. 36.) Speaking again on the Address in 1879, Sir John A. Macdonald said: "I am glad the Opposition have adopted the English modern system—a very proper one—of passing the Address without amendment, and when all the various subjects alluded to in it are dealt with, when the measures proposed are before the House, they and their details can be criticized with a full knowledge and satisfactory explanation with regard to the policy of the Government." (Debates, 1879, p. 24.)

**170.** (1) Amendments to the Address are moved by way of additions thereto. M. 173. A general debate may take place on the Address, but when an amendment is proposed the discussion should be strictly confined to the subject matter of the amendment. B. 97.



(2) An amendment to the Address in Reply to the Speech from the Throne is a motion of "No-confidence"; so is an amendment not accepted by the Government on the motion for the House to resolve itself into Committee of Supply or Ways and Means. But a sub-amendment (as the amendment to the amendment is usually called), is not a new motion of no confidence; it is intended to strengthen or weaken the amendment to which it must be relevant and upon which it is dependent. It does not entitle a member to speak longer than forty minutes, this privilege having been already exercised by the mover of the amendment.

(3) Amendments to the Address in reply to the Speech from the Throne are the means used by the Opposition for the purpose of challenging government policies or actions when Parliament meets again after a few months' recess. This practice is recognized as one of the prerogatives of Her Majesty's Loyal Opposition. An amendment to the Opposition amendment may be moved provided it is relevant, but if it proposes to add to the main amendment words of commendation for the government then it is equivalent to an expanded negative and destroys the whole effect of the Opposition's amendment thereby reducing to naught one of the democratic conventions of the British parliamentary system. If such a practice prevailed, the government majority would be able to kill every amendment made by its opponents to the address in reply to the Speech from the Throne. It was done in the House of Commons of Canada on April 13, 1899, and December 5, 1951, thereby establishing precedents which the House may not always find it wise to follow.

(4) An amendment substantially the same as one that was moved on the Address in reply to the Speech from the Throne and rejected cannot be moved on the motion that the Speaker leave the Chair for the House to go into Committee of Supply.

H. of C. Can. Deb. Nov. 4, 1932; April 8, 1859; March 14, 1934; May 17, 1954; May 2, 1955.

(5) Members should be extremely careful in moving their amendments on the Address in Reply because otherwise the House having given its judgment on the various points that are brought forward then, if later other amendments are moved which touch these very points which have already been decided upon any similar amendments, they should be declared to be out of order. C.J. Vol. 1955, pp. 545-6. Statement by Speaker Beaudoin.



## CHAPTER V

### QUESTIONS

QUESTIONS PUT TO MINISTERS.

ORAL ANSWERS.

STARRED QUESTIONS.

PRINTED ANSWERS.

QUESTION TO STAND AS NOTICE.

QUESTION MADE ORDER FOR RETURN.

REPORTS DEPOSITED WITH CLERK OF THE HOUSE.

RECORDED IN VOTES AND PROCEEDINGS.

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### STANDING ORDER

39. [20th December, 1867; 10th July, 1906; 29th April, 1910; 22nd March, 1927; 12th July, 1955]. (1) Questions may be placed on the order paper seeking information from Ministers of the Crown relating to public affairs; and from other members, relating to any bill, motion, or other public matter connected with the business of the House, in which such members may be concerned; but in putting any such question or in replying to the same no argument or opinion is to be offered, nor any facts stated, except so far as may be necessary to explain the same; and in answering any such question the matter to which the same refers shall not be debated.

(2) (a) Any member who requires an oral answer to his question may distinguish it by an asterisk and it shall be printed on the daily order paper under the heading "Starred Questions" until it be disposed of.

(b) Starred questions shall be taken up on Wednesdays after the ordinary daily routine of business has been disposed of and not later than one hour after the time of meeting of the House. If proceedings thereon be not concluded at the expiration of one hour after such business has been entered upon, such starred questions as have not been taken up shall stand over until the next Wednesday sitting.

(c) No member shall have more than three starred questions at a time on the daily order paper.

(d) On every day other than Wednesday, starred questions shall follow the last order of business listed for the respective day on the daily order paper.

(3) (a) If a member does not distinguish his question by an asterisk, it shall be printed on the daily order paper under the heading "Questions" until it be disposed of, and the Minister to whom the question is addressed may deposit the answer with the Clerk of the House, during the first hour of a daily sitting and, if the answer is so deposited, it shall be printed in the official reports of the debates of the same day.

(b) "Questions" shall be printed as the last section of the daily order paper.

(4) If, in the opinion of Mr. Speaker, a question on the order paper put to a Minister of the Crown is of such a nature as to require a lengthy reply, he may, upon a request made by the government during the question period on Wednesday, direct the same to stand as a notice of motion, and to be transferred to its proper place as such upon the order paper, the Clerk of the House being authorized to amend the same as to matters of form.

(5) If a question is of such a nature that, in the opinion of the Minister who is to furnish the reply, such reply should be in the form of a return, and, during the question period on Wednesday, the Minister states that he has no objection to laying such return upon the Table of the House, his statement shall, unless otherwise ordered by the House, be deemed an order of the House to that effect and the same shall be entered in the Votes and Proceedings as such.

40. [12th July, 1955]. (1) Any return, report or other paper required to be laid before the House in accordance with any act of Parliament or in pursuance of any resolution or standing order of this House may be deposited with the Clerk of the House on any sitting day, and such return, report or other paper shall be deemed for all purposes to have been presented to or laid before the House.

(2) A record of any such return, report or other paper so deposited shall be entered in the Votes and Proceedings of the same day.

ANNOTATIONS, COMMENTS AND  
PRECEDENTS

**171.** In putting a question a member must confine himself to the narrowest limits. (E.D., Vol. 168, July 18, 1862.)

In making a question, observations which might lead to debate cannot be regarded as coming within the proper limits of a question. (E.D., Vol. 261, M. 958-959.)

The purpose of a question is to obtain information and not to supply it to the House.

A question oral or written must not:

- (a) be ironical, rhetorical, offensive, or contain epithet, innuendo, satire, or ridicule. (C. 128; M. 242; B. 313.)
- (b) be trivial, vague, or meaningless. (C. 128; 3 Han. Deb. 4s., 869.)
- (c) multiply, with slight variations, a similar question on the same point. (C. 128.)
- (d) repeat in substance a question already answered, or to which an answer has been refused. (C. 128.)
- (e) inquire whether statements made in a newspaper are true. (M. 243.)
- (f) contain an expression of opinion. (C. 128; M. 242; B. 313.)
- (g) be hypothetical. (C. 128; B. 313; M. 242.)
- (h) contain inferences. (M. 242.)
- (i) contain imputations. (M. 242; B. 313.)
- (j) be framed so as to suggest its own answer. (C. 128.)
- (k) be a speech, however short (C. 128); nor be of unreasonable length. (B. 314.)
- (l) seek, for purposes of argument, information on matter of past history. (C. 128.)
- (m) ask solution of a legal proposition, such as interpretation of a Statute, a Minister's own powers, etc. (C. 129; M. 242; B. 314.)
- (n) reflect on or relate to character or conduct of persons other than in a public capacity. (M. 243, 271; C. 130; B. 315.)
- (o) refer discourteously to a friendly foreign country. (C. 130.)
- (p) be asked which might prejudice a pending trial in a Court of law. (M. 243.)
- (q) contain or imply charges of a personal character. (M. 243.)

- (r) refer to debate or answers to questions of the current Session. (C. 130; M. 242.)
- (s) embody a series of questions which should be moved for an Address or Order. (C. 130; B. 315.)
- (t) impugn the accuracy of information conveyed to the House by a Minister. (B. 314.)
- (u) suggest amendments to bills. (C. 130.)
- (v) anticipate an Order of the Day or other matters. (M. 242.)
- (w) raise a matter of policy too large to be dealt with in the limits of an answer to a question. (C. 128.)
- (x) deal with an action of a Minister for which he is not responsible to Parliament; (C. 139 and note), or with matters not within his official knowledge.
- (y) raise matters under control of local authorities not responsible to Government or Legislature. (C. 129.)
- (z) refer to speeches made outside the House; but in the case of Cabinet Minister, it is permissible to ask Prime Minister whether such speech represents policy of Government. (C. 129.)
- (aa) seek information about the internal affairs of foreign countries or the Dominions. (C. 129.)
- (bb) ask the Government's opinion on matters of policy. (M. 240; B. 314.)
- (cc) ask what advice a Minister proposes to give Crown, (but may ask what advice he has given). (C. 128.)
- (dd) deal with matters not officially connected with Government or Parliament, or which are of a private nature.
- (ee) relate to communications alleged to have passed between a member and a Minister. (40 Parl. Deb. 4s., 1561.)
- (ff) seek information set forth in documents equally accessible to questioner, as Statutes, published reports, etc. (C. 128; 67 H.C.D. 1819.)
- (gg) seek information about matters which are in their nature secret, such as decisions or proceeding of Cabinet, advice given to Crown by Law Officers, etc. (C. 130.)
- (hh) seek information about proceedings in a Committee which has not yet made its report to the House. (Vol. 2, p. 243.)

- (ii) introduce name of, or contain reflection on, the Sovereign or Royal Family, or refer to influence of the Crown. (C. 129.)
- (jj) be addressed to the Leader of the Opposition inquiring the course he intends to adopt regarding a motion by the Government. (M. 241.)
- (kk) criticize decisions of the House. (C. 130.)
- (ll) seek from an ex-Minister information with regard to transactions during his term of office. (M. 241.)
- (mm) reflect on the character or conduct of the Speaker, the Deputy-Speaker, members of either House of Parliament and Judges of High Courts. These can only be dealt with on a substantive motion.
- (nn) relate to matters which passed outside the walls of the House and do not relate to any Bill or motion before the House. (E.D., Vol. 228, p. 1757-8.)

**172.** The Speaker, in common with his duties of supervision over the proceedings of the House, may rule out any question which violates the privileges of Parliament in the same way as he deals with irregularities in motions and amendments. (M. 239; 2 Red. 243.) He may make an alteration in the question (M. 240) or refer it back to the member for correction. (B. 313.) A member may call the attention of the House to the matter and may challenge the action of the Speaker. (B. 313.)

**173.** (1) On the Orders of the Day being called, members may ask members of the Government to explain certain matters in accordance with practice, but it is not done under the authority of a Standing Order and therefore such questions may be either permitted or disallowed by the Speaker who must judge each case on its merits. The practice has been so long and so regularly in the House that, if not impossible, in my opinion, it would be inadvisable to stop it. It seems to me manifestly unfair to compel ministers to answer questions on important matters without an opportunity to consult their chief officers; and it would be arbitrary to deprive private members of putting certain questions of immediate urgency on the Orders of the Day being called. The principle on which the practice has been tolerated in past years should be respected, that is, the reading of long series of questions elaborately prepared is not to be allowed on the Orders of the Day being called. Honourable members must confine themselves to the questions

they desire to put; they must not enter into an argument upon asking a question; they cannot add any remarks upon it; a question, the answer to which involves an expression of opinion, cannot be put. A member in putting a question cannot state an opinion, and he must confine his observations to those which are absolutely necessary to make the question intelligible. Speaker Glen C.J., Vol. (1940), pp. 216-7.

(2) A question which could be inserted on the order paper is not allowed on the Orders of the Day being called.

(3) No question can be put, nor remarks made, after the Clerk Assistant has read the first item on the order paper, for then all questions or remarks must strictly relate to the business under consideration. B. 355.

(4) Questions asked orally on the Orders of the Day being called must not be prefaced by the reading of letters, telegrams, newspaper extracts or preambles of any kind. When a member, on the 18th February 1936, said: "I should like to ask a question of the Minister of National Revenue based upon a circular letter which was sent out by the . . . Company to its dealers in my constituency. This letter is dated at Saskatchewan and reads: . . ." Mr. Speaker said:—"I do not think the honourable gentleman should read the letter; he should put his question directly." The Member: "I must read the letter in order to make my question intelligible. This is a very short letter." The Speaker: "I do not think the honourable gentleman has a right to read the letter. He should put his question directly, as to what Government intends to do." (The letter was not read.) Can. Deb. 1936, p. 269.

**174.** On the 27th May, 1936, a member with the intention of addressing a question to a Minister, began to give some explanation about the alleged danger of making a certain mineral area dependant upon the plans of some Smelters' Company. The Speaker interrupted him and said: "Order. The honourable member ought to understand that he cannot make a speech in asking a question." Can. Deb. 1936, p. 3131.

**175.** The strict rule is that no question can be put by one private member to another except on the Orders of the Day and on measures with which the member to whom the question is put may be connected. (3 E.D., Vol. 63, p. 491.)

A question to an unofficial member has been permitted regarding a circumstance alleged to have happened outside Parliament because it impugned the veracity of a member in



respect to a statement made by him in the House. (313 H.D., 3s, 1249.)

A member not holding an official position in the Government is not called upon to answer any question involving the expression of an opinion. (3 E.D., Vol. 76, 1177.)

**176.** (1) On the 24th February 1933, a member said he should like to address a question to the Minister of Labour concerning the town of Transcona. He then read a telegram. Mr. Speaker said: "The honourable member should ask his question, not read a communication. The communication could have been sent to the minister in charge without it being necessary to read it in the House." Can. Deb. 1933, p. 2432.

(2) On the Orders of the Day being called, a member stated that he would read a telegram on which he intended to base a question addressed to a minister. The Speaker said: "I think it would be as well to address the question direct to the Government. It is not a desirable practice to read telegrams or newspaper extracts in prefacing a question." Can. Deb. 1932-33, p. 1713.

(3) On the 6th April 1937, a member rose and said: "I wish to direct the attention of the House to a telegram, typical of several, received from X, secretary of the Farmers' Protective Association of Shaunavon. The message reads: (The member read it) Some Honourable Members—Order: Mr. Speaker: "I think the Honourable Member should present his question immediately without reading the telegram." Can. Deb. 1937, p. 2600.

(4) A private communication criticising the action taken by a government officer in the performance of his official duties cannot be read in debate unless the member quoting it is prepared to place it on the Table of the House. H. of C. 1941, Vol. 2, p. 1327.

**177.** Reading telegrams, letters or extracts from newspapers as an opening to a question when the Orders of the Day are called is an abuse of the rules of the House. It is not good parliamentary practice to communicate written allegations to the House and then to ask ministers either to confirm or deny them. It is the member's duty to ascertain the truth of any statement before he brings it to the attention of Parliament. This has been decided long ago in the United Kingdom House of Commons. On the 14th of June 1882, Mr. Speaker Brand, in preventing a member reading a telegram from a news-

paper and founding a question on it, pointed out the extreme inconvenience of founding questions on every telegram in every newspaper. "I am bound to say, he added, that it does appear to me that before questions of such gravity are put, an honourable member should take some measure to ascertain the truth of the telegram." C.J., Vol. 83, pp. 160-1.

**178.** Questions addressed to Ministers should relate to the public affairs with which they are officially connected, to proceedings pending in Parliament, or to any matter of administration for which the Minister is responsible. Within these lines an explanation can be sought regarding the intentions of the Government, but not an expression of opinion upon matters of policy.

It is not in order to ask merely whether certain statements made in a newspaper, are true; but attention may be drawn to such statements, if the member, who puts the question, makes himself responsible for their accuracy. M. 242-3.

**179.** (1) If, for instance, a member's question is based on a newspaper report to the effect that a serious offence has been committed by a certain government officer and the member vouches for the accuracy of that statement which later on is found to be untrue, he will suffer the consequences of having induced the House into error and may be censured or sentenced to a penalty which the House may deem proper to impose upon him. Should the minister concerned answer the question before the falsehood is detected the House would be justified in punishing the member with the utmost severity. If the member refuses to make himself responsible for the accuracy of the facts reported by the newspaper, the minister is not bound to answer the question.

(2) If a member proposes to read a communication in its entirety, or even a portion, without divulging the name and address of the sender and the member refuses to take the responsibility for the truth and accuracy of the contents, such a communication should be laid upon the table, and, particularly, if so desired by any member of the House. The principle upon which this is based is that where information is given to the House, the House itself is entitled to the same information as the member who may quote the statement. C.J., Vol. 81, p. 171 Can. Deb. March 7, 1941.

(3) On the 17th November 1932, a member attempted to read a telegram on the Order of the Day being called. The

Speaker said: "Has the honourable gentleman a question to ask? He knows quite well that it is out of order to precede questions with a lengthy statement on the Orders of the Day." The member then put his question but he did not read the telegram. Can. Deb. 1932, p. 1260-1.

(4) On the 31st May 1928, a member began to read a telegram on which he intended to base a question, but the Speaker interrupted him saying: "I have already ruled that telegrams should not be read to the House because, first, the signature cannot be ascertained and, secondly, no outsider may give his opinion to influence the House." Can. Deb. 1928, p. 3604.

**180.** With regard to the length of questions placed on the Order Paper, the Speaker made the following ruling on February 26, 1923: "May I call the attention of the honourable members to the unusual length of some questions that are now on the Order Paper? All the authorities on parliamentary practice, both in England and in Canada, are adverse to very lengthy questions, and I must discourage as much as possible their appearance on the Order Paper. Let me read from Bourinot 4th Edition, at page 314: 'Questions of excessive length with numerous or lengthy quotations have been ruled out.' And a series of precedents are given at the foot of the page. So, without questioning the necessity of the information required by honourable members, if we are to live up to the best traditions and precedents, such a mass of information when required should not come under one head, and notice of motion should be given in each case." Can. Deb. 1923, pp. 622-3.

**181.** (1) Questions must be answered briefly and distinctly, and be limited to the necessary explanations, though a certain latitude is permitted to Ministers of the Crown whenever they find it necessary to extend their remarks with the view of clearly explaining the matter in question. (M. 245; B. 314.)

(2) An answer to a question placed by a member on the Order Paper cannot contain gratuitous references, and, if it does, it must be expunged from Hansard. (Can. C.J., Vol. 62, p. 193.)

(3) A Minister may decline to answer a question without stating the reason for his refusal, and insistence on an answer is out of order, no debate being allowed. (2 Red. 243-4.) A refusal to answer cannot be raised as a question of privilege, nor is it regular to comment upon such refusal. (B. 314.) A mem-

ber can put a question, but has no right to insist upon an answer. (269 H.D. 3s., 460.)

(4) An answer to a question cannot be insisted upon, if the answer be refused by the Minister on the ground of the public interest; nor can the question be replaced on the notice paper. The refusal of a Minister to answer on this ground cannot be raised as a matter of privilege. (M. 240.) H. of C. Can. Deb. April 29, 1942.

(5) In questions of a grave character, a Minister is entitled to ask that notice should be given. (E.D., Vol. 270, p. 1258.)

If a Minister desires that notice of a question should be given him, an honourable member should comply with that request. (E.D., Vol. 226, p. 1530.)

A Minister may, if he thinks fit, on the ground of public interest, answer a question appearing on the Order Paper, even although the member in whose name it appears does not call the same. (Can. C.J., Vol. 45, p. 154.)

**182.** Although there may be no debate on an answer, further questions, within due limits, may be addressed to the Minister as may be necessary for the elucidation of the answers that have been given. (M. 245.) The extent to which supplementary questions may be asked is in the discretion of the Speaker. (M. 245.)

After a Minister has answered a question asked by a member when the Orders of the Day are called, no discussion of any kind should take place. Mr. Speaker Lowther laid down the rule about this on the 5th July, 1915, in the British House of Commons, where the practice is practically the same as ours. He said: "All supplementary questions are irregular and are not provided for at all in any Standing Order. It is entirely a matter of grace. I may say generally that the object of supplementary questions is to elucidate any ambiguity in the reply of a Minister or to seek for some further information if he can give it; but supplementary questions should not be put, and ought not to be put, to embarrass a Minister or to lead him to give an answer in a hurry which at a subsequent time he might be sorry that he gave. I will give as much freedom as I possibly can, but at the same time there must be some limits."

**183.** It is not imperative for the Minister of Justice or the Solicitor General to reply to questions seeking information upon legal points arising out of measures before Parliament or relating to matters of public interest. They are the legal advisers of the Government and in that capacity are confidential officers, and nothing could be more inconvenient than that they should be liable to be interrogated by members as to the advice they have given or may be called upon to give to any department of Government, or as to their opinion upon the construction of a statute or other document, or upon abstract questions of law which need to be judicially determined. (Sir R. Palmer, *Hans. Deb.* Vol. 211, p. 607.)

Consideration of public policy and a due regard to the interest of the state occasionally demand that information sought for by members of Parliament should be withheld at the discretion and upon the general responsibility of ministers. Disraeli once said in the House that if the House were to insist upon the production of papers and correspondence which concern the preparation and preliminary consideration of measures, confidential reports given frankly and freely for the heads of Departments will be discontinued and we shall have a system of reports framed for laying upon the table of the House. Todd. *Parliamentary Government in England.*

**184.** Standing Order 39 does not allow questions addressed to the Speaker. If however members write to the Speaker and inquire about matters placed under his control, he is bound to give the information required. The House of Commons of which he is the head is like one of the Government's departments with a staff of several hundred officers, clerks and employees. The annual expenditure, including members' indemnity, is under his supervision as well as the Library of Parliament and the Parliamentary Restaurant controlled by joint committees of both Houses of which he is Joint Chairman with the Speaker of the Senate. His prestige would suffer if his name appeared frequently on the Order Paper or in the Votes and Proceedings in connection with questions relating to appointment of sessional employees, meals in the restaurant or books received in the library. His position is not only administrative but it is quasi-judicial. Being the presiding officer, he cannot be drawn into

any discussion on the floor of the House. He must be completely dissociated both from the Government and from party politics if his impartiality is to remain unquestioned. Campion says, page 129: "Questions dealing with matters within the jurisdiction of the Speaker are out of order." The proper way to deal with the Speaker if perchance his fitness is challenged is by a regular motion made under the ordinary rules of procedure and debate.

## CHAPTER VI

### NOTICES

REQUIRED FOR MOTIONS.  
UNANIMOUS CONSENT.

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### STANDING ORDERS

41. [20th December, 1867; 22nd March, 1927]. Forty-eight hours' notice shall be given of a motion for leave to present a bill, resolution or address, for the appointment of any committee, or for placing a question on the order paper; but this rule shall not apply to bills after their introduction, or to private bills, or to the times of meeting or adjournment of the House. Such notice shall be laid on the Table before six o'clock p.m., and be printed in the Votes and Proceedings of that day.

42. [20th December, 1867; 22nd March, 1927]. A motion may, in case of urgent and pressing necessity previously explained by the mover, be made by unanimous consent of the House without notice having been given under Standing Order 41.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**185.** The distinction between orders and resolutions must be considered in the interpretation of Standing Order 41 which limits the giving of forty-eight hours notices to "leave to present a bill resolution on address, the appointment of any committee and the placing of a question on the order paper." It does not mention "orders", and it is specific in saying that the rule shall not apply to bills after their introduction or to the times of meeting or adjournment of the House. Accordingly, a proceeding such as dividing a Bill into two or more Bills or making two Bills into one can be moved without notice, being an order, not a resolution, and taking place after the introduction of the Bill.

**186.** (1) There are only two ways in which a question can be withdrawn from the Order Paper: first. by a written notice, by the member putting the question, to the Clerk of the House, and, secondly, by the member, in his place in the House, informing the Speaker that he desires the question to be dropped. (Can. C.J. Vol. 45, p. 154.)

(2) Oral notices for future proceedings do not exist in the Canadian House of Commons. It is useless for a member to say: "Mr. Speaker, I give notice that I will move a certain question to-morrow." This would not give him any precedence on the next day and he would not thereby acquire the right to speak on matters not standing on the Order Paper. An exception must be made in respect of certain routine proceedings dealing with the observance of proprieties of the House, the maintenance of its authority, the conduct of its officers, the management of its business, the correctness of its records or any other similar matter brought up by the Prime Minister and settled without the passage of any resolution. A Minister may also announce from his seat that he will later make an official statement on some important matter but he does so as a courtesy to the members. These indications of the Government's intentions are not the kind of notices required under Standing Order 41 which must be printed in the Votes and Proceedings.

**187.** (1) As the Notice Paper is published by authority of the House, a notice of motion or of a question to be put to a member containing unbecoming expressions, infringing its rules, or otherwise irregular, may, under the Speaker's authority, be



corrected by the Clerks at the Table. Those alterations, if it be necessary, are submitted to the Speaker or to the member who gave the notice. A notice wholly out of order, as, for instance, containing a reflection on a vote of the House, may be withheld from publication on the Notice Paper, or, if the irregularity be not extreme, the notice is printed and reserved for future consideration. M. 235. In Canada, the Notice Paper is an annex of the Votes and Proceedings.

(2) A modification of a notice of motion standing upon the Notice Paper is permitted, if the amended Notice does not exceed the scope of the original Notice. M. 234.

(3) A new Notice must be given in the Votes and Proceedings, under Standing Order 41, when a material change is to be made to a Notice of Motion before it is taken by the House. (Can. C.P., Vol. 45, pp. 200-1.)

**188.** The exact time at which these Notices should be handed to the Clerk at the Table is of minor importance. (Can. C.J., Vol. 48, p. 461.)

(1) The publication of a proposed motion, once in the Votes and Proceedings and the next day on the Order Paper, is sufficient to cover two days' notice under Standing Order 41.

(2) A member of the Government may act in behalf of a colleague in all cases, including the proposal of new clauses to a Bill, but with this exception, or in the case of an unopposed return, no motion can be moved save by the member in whose name the notice stands. M. 255.

(3) No notice is required for a motion to change the promoter of a Public or Private Bill after its introduction. (Can. C.J., 1884, Vol. 18, p. 238.)

(4) Merely formal motions for the adoption of reports or for certain papers to which there is no objection, are usually permitted to be made in the absence of the member who has placed the notice thereof on the Order Paper.

(5) If the member who has given notice of an amendment to a Private Bill is not in his seat when the Bill is called for third reading, no other member can move the amendment on his behalf. Can. Deb. 1928, p. 3379.

**189.** In the absence of Standing Orders to the contrary, the following motions may be made without notice:

- For the conduct and appointment of temporary officers of the House;
- For the correctness of the records of the House;
- For discussing a matter of privilege;
- For the adjournment of the House or debate;
- For the observance of the proprieties of the House of Commons such as accepting a gift or any exchange of courtesies;
- For the fixing of sitting days and the time of meeting or adjournment;
- For the previous question;
- For reading the orders of the day;
- For proceeding to another order;
- For postponing the question to a day certain;
- For amending the question.

**190.** It sometimes happens towards the end of a session that a few additional hours are needed in order to conclude a debate or advance the date of prorogation. Then the leader of the House may move without having given notice that there be no recess at one and six o'clock and the adjournment do not take place at the hour fixed by Standing Order 6(3). As the purpose of this motion is to prolong a sitting which is in progress there is no possibility of giving notice and none is required under Standing Order 41 which says distinctly that its main provision does not apply to "the times of meeting or adjournment of the House". See decisions given by Speaker Rhodes on May 21, 1920, and Speaker MacDonald on December 20, 1951.

## CHAPTER VII

### MOTIONS; AMENDMENTS; NOTICES OF MOTIONS; THE PREVIOUS QUESTION

TO BE IN WRITING AND READ IN BOTH LANGUAGES.  
AMENDMENTS ON MOTION TO LEAVE THE CHAIR.  
WITHDRAWAL OF MOTION.

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#### STANDING ORDERS

43. [20th December, 1867]. All motions shall be in writing, and seconded, before being debated or put from the Chair. When a motion is seconded, it shall be read in English and in French by Mr. Speaker, if he be familiar with both languages; if not, Mr. Speaker shall read the motion in one language and direct the Clerk at the Table to read it in the other, before debate.

44. [10th July, 1906]. When a question is under debate no motion is received unless to amend it; to postpone it to a day certain; for the previous question; for reading the orders of the day; for proceeding to another order; to adjourn the debate; or for the adjournment of the House.

45. [27th July, 1927]. Only one amendment and one sub-amendment may be made to a motion for Mr. Speaker to leave the Chair for the House to go into committee of supply or ways and means.

46. [20th December, 1867; 22nd March, 1927]. A motion to refer a bill, resolution or any question to the committee of the whole, or any standing or special committee, shall preclude all amendment of the main question.

47. [29th April, 1910]. Notices of motions for the production of papers which the member asking for the same intends to move without discussion, shall be marked by him with an asterisk and shall be placed by the Clerk on the order paper under the heading "Notices of motions for the production of papers". All such notices when

called shall be forthwith disposed of; but if on any such motion a debate be desired, it will be transferred by the Clerk to the order of "Notices of motions".

48. [22nd March, 1927]. (1) When a private member's notice of motion shall have been twice called from the Chair and not proceeded with, it shall be dropped, provided that it may be placed at the foot of the list on the order paper upon motion made after due notice.

(2) If the notice of motion thus restored is again called from the Chair and not proceeded with, it shall be withdrawn from the order paper.

(3) No member shall have more than one notice of motion at a time on the order paper.

(4) This standing order shall not apply to notices of motions for the production of papers.

49. [20th December, 1867]. A member who has made a motion may withdraw the same only by the unanimous consent of the House.

50. [20th December, 1867]. Whenever Mr. Speaker is of opinion that a motion offered to the House is contrary to the rules and privileges of parliament, he shall apprise the House thereof immediately, before putting the question thereon, and quote the standing order or authority applicable to the case.

51. [20th December, 1867]. The previous question, until it is decided, shall preclude all amendment of the main question, and shall be in the following words, "That this question be *now* put". If the previous question be resolved in the affirmative, the original question is to be put forthwith without any amendment or debate.

ANNOTATIONS, COMMENTS AND  
PRECEDENTS

**191.** (1) Every matter is determined in the House of Commons upon a question put by the Speaker on a proposition submitted by a member and resolved either in the affirmative or negative as the case may be. A motion is a proposal made by one member, in accordance with certain well established rules, that the House do something or order something to be done, or express an opinion with regard to some matter or thing. The proposal is not a motion until it has been actually moved. If it appears on the order paper as a motion to be taken up in proper time, it is a notice of motion and will remain so until it has been brought forward by a member and put to the House by the Speaker. No motion shall be made in the negative form, for the very good reason that the House cannot decide not to do what it is not doing.

(2) The judgment or will of the House of Commons is that which is evidenced by the consent or agreement of the majority. In order to ascertain this agreement, the adopted method of proceeding consists in the submission of a proposition upon which the members express their opinion by a simple affirmative or negative. This method has been expanded into a system of rules by the application and use of which the judgment of the House may be ascertained with facility and precision. The different proceedings which take place, from the first submission of a proposition through all the changes it may undergo until the final decision upon it, constitute the subject of the rules of debate and proceedings of the House. Every motion seconded is propounded by the Speaker as a question for the decision of the House. There can be but one question pending at the same time though there may be numerous matters of business in various stages of progress standing on the Order Paper for consideration during the session.

(3) The *question* is the subject matter of the motion, and on the merits of that subject matter the House has to give a decision either unanimously or by the majority of the members present. The Speaker proposes the question in the words of the mover. When the motion has been seconded it merges in the question which is read by the Speaker, after which the House is in possession of the question and must dispose of it. Every question when agreed to assumes the form either of an *order*

or a *resolution* of the House. By its orders the House directs its committees, its members, its officers, the order of its own proceedings and the acts of all persons they concern; by its resolutions the House declares its own opinions and purposes.

**192.** If a motion finds no seconder, it drops immediately. When it has been seconded, it should at once be proposed from the Chair. Under Standing Order 59, motions need not be seconded in Committee of the Whole, but this rule does not apply to standing or special committees where every motion must be seconded. Every member is entitled to make a motion, but once he has moved it it is in the possession of the House and he can only withdraw it by leave granted without any negative voice. The Speaker asks: "Is it your pleasure that the motion be withdrawn?" If any dissentient voice is heard, the Speaker proceeds to put the question. A motion which has been withdrawn or which for want of a seconder has not been put may be again proposed. When an amendment has been proposed, the original motion cannot be withdrawn until the amendment has first been agreed to, withdrawn or negatived. An amendment or motion can only be withdrawn at the request of the member who moved it.

**193.** No motion is regularly before the House until it has been read from the Chair. Then it may be debated, amended, superseded, adopted, negatived or withdrawn, as the House may decide. If a member neglects or declines to proceed with a motion, the House cannot force him to do so. A motion which contains two or more distinct propositions may be divided so that the sense of the House may be taken on each separately.

If a motion is ruled out on the ground that its wording is objectionable or its allegations are irregular, the mover is not thereby deprived of the right to move it again after having made the necessary corrections and given a new notice. If the irregularities are trivial or without bearing on the main purpose of the motion, the House may agree to rectify them, but the mover himself cannot amend his own motion.

**194.** (1) A motion or amendment cannot be brought forward which is the same in substance as a question which has already been decided, because a proposition being once submitted and carried in the affirmative or negative cannot be questioned again but must stand as the judgment of the House. This rule

applies to the decision taken on amendments to the Address in Reply to the Speech from the Throne. A question once put cannot be altered by the member moving it, without the consent of the House. The reconsideration of a question already decided is not allowed under British parliamentary practice, but it prevails in many public bodies and societies. A resolution may however be rescinded, i.e., it may be made void and of no effect. A question once put cannot be altered by the member moving it, without the consent of the House.

(2) There are several kinds of motions, namely:

Substantive, Privileged, Superseding, Dilatory, Incidental and Subsidiary.

**195.** A *substantive* motion is a self-contained proposal not incidental to any proceeding, amendable and drafted in such a way as to be capable of expressing a decision of the House.

*Privileged* motions which must not be mistaken for questions of privilege, deal with situations arising from the subject-matter of, or the debate on, the original question either in consequence or in anticipation of a vote or through the necessity of resorting to new proceedings. They must be given the right of way when proposed during a debate. They are divided into *superseding* motions and amendments.

*Superseding* motions, though independent in form, are moved in the course of debate on questions which they seek to set aside. They are divided into two classes, namely: *dilatory motions*; *the previous question*.

*Dilatory motions* are designed to dispose of the original question either for the time being or permanently. They are the following: "That consideration of the question be postponed to ..... (date)." "That the orders of the day be read." "That the House proceed to (name another order); or that the House proceed to the next business." "That the debate be now adjourned." "That this meeting be now adjourned." Adjournment motions are in this class because they may sometimes be used to stop a debate which will never be resumed.

**196.** The *previous question* is moved when the original question is under debate, in order to force a direct vote on the original question before an amendment is proposed. The form of the motion is "That the question be now put." Once it is proposed, the debate may continue on the original question. The

previous question cannot be moved upon an amendment though, after an amendment has been agreed to, the previous question can be put on the original motion as amended. It may be moved after an amendment has been negatived. If the previous question be resolved in the negative, the Chairman cannot put the original motion which is consequently superseded but which, however, may be revived on a future day as the negative of the previous question merely binds the chairman not to put the original motion at that time. A motion for the previous question is not admitted in Committee of the Whole or in any other committee. (See M. 14th ed., p. 572.) (See also No. 216 herein.)

**197.** *Superseding* motions cannot be applied to one another; for example, if a motion to postpone consideration of the original question is moved, a motion to read the order of the day or for the previous question cannot be moved to suppress that motion.

An *incidental* motion is one which arises out of, and is connected with, other motions to which it relates as, for instance, motions for reading papers immediately after they have been laid on the table, to withdraw a motion, or an amendment, or for obtaining unanimous consent to dispense with a rule for the time being in order to expedite business.

*Subsidiary* motions are made use of to move questions forward in the different stages of procedure through which they have to pass before their final adoption. The first, second and third readings of bills are in this class, and also the motions to commit, i.e., to refer a matter either to the Committee of the Whole or any other committee.

**198.** When a motion is adopted, it becomes the resolution, vote or order of the House. The form of a motion must consequently be so framed, and its language so expressed, that, if it meets the approbation of the House, it may at once become the resolution, vote or order of the House which it purports to be.

A motion should not be argumentative and in the style of a speech, nor should it contain unnecessary provisions or objectionable words.

Motions are usually expressed in the affirmative, even where their purpose and effect are negative. Thus, for example, the form of the previous question is, "that the question be now put", which is an affirmative proposition, though the purpose of the mover may be to obtain a decision of it in the negative.



The previous question may be moved by a member who does not want it to carry, his object being to prevent the Speaker from putting the original question.

**199.** (1) When a member hands a motion to the Speaker after having spoken in support of it, the Speaker may, before putting the question to the House, make such corrections as are necessary or advisable in order that it should conform with the usages of the House. (Can. C.J., Vol. 61, pp. 186-188.)

(2) A motion is not irregular on account of its vagueness. Can. Com. J. 1870, p. 127.

(3) If the language of a motion is offensive either to the House, or to any member, the same proceedings may be had in relation to it as are proper in the case of disorderly or offensive words used in debate; and, for the same cause, a motion may either be refused an entry among the minutes, or if already entered, may be expunged.

(4) It is the Speaker's duty to call the attention of the mover and of the House to the irregularity of a motion; whereupon the motion is usually withdrawn or so modified as to be no longer objectionable. If the motion is of such a nature that the objection cannot be removed, the Speaker may refuse to receive or put the motion to the House. He treats it as a nullity.

Any irregularity of any portion of a motion shall render the whole motion irregular. Smith's Digest, 7th Ed., p. 223.

(5) If a motion is not objectionable or if it is objected to and the objection is not sustained by the House, it is the right of the mover to have his motion proposed in the very words in which it is made.

**200.** (1) An old rule of Parliament reads: "That a question being once made and carried in the affirmative or negative, cannot be questioned again but must stand as the judgment of the House." Unless such a rule were in existence, the time of the House might be used in the discussion of motions of the same nature and contradictory decisions would be sometimes arrived at in the course of the same session. B. 328-9.

(2) Not more than one question should be before the House at the same time. "When a motion hath been made, that matter must receive a determination by a question, or be laid aside by the general sense of the House before another be entertained" (Scobel, 21). This is a restatement of an old rule of 28th June,

1604. It indicates the possibility of the withdrawal of a motion by leave of the House. C. 16.

(3) A motion dealing with the same subject-matter as a Bill standing on the Order Paper for second reading cannot be considered. (Can. C.J., Vol. 60, p. 420.)

(4) A motion which contains two or more distinct propositions may be divided so that the sense of the House may be taken on each separately.

(5) If a member neglects or declines to proceed with a motion, the House cannot force him to do so, but he has a right to drop it or it may be dropped under S.O. 49. A member who has given notice of a series of resolutions may withdraw some of them and go on with the others.

(6) The member who has proposed a motion can only withdraw it by leave of the House, granted without any negative voice. This leave is signified, not upon question, as is sometimes erroneously supposed, but by the Speaker taking the pleasure of the House. He asks "Is it your pleasure that the motion be withdrawn?" If no one dissents, he says: "The motion is withdrawn;" but if any dissentient voice be heard, he proceeds to put the question. M. 273.

(7) An amendment can be withdrawn in the same way, but neither a motion nor an amendment can be withdrawn in the absence of the member who moved it. M. 273.

Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been first disposed of by being agreed to, withdrawn or negatived, as the question on the amendment stands before the original motion. M. 273-4.

In asking leave to withdraw a motion a member is not entitled to make a speech.

**201.** The object of an amendment may be to effect such an alteration in a question as will obtain the support of those who, without such alteration, must either vote against it or abstain from voting thereon, or to present to the House an alternative proposition either wholly or partially opposed to the original question. This may be effected by moving to omit all the words of the question after the first word, "That", and to substitute in their place other words of a different import. In that case the debate that follows is not restricted to the amendment, but includes the motives of the amendment and of the

motion, both matters being under the consideration of the House as alternative propositions. M. 282.

A motion may be amended: (a) by leaving out certain words; (b) by leaving out certain words in order to insert other words; (c) by inserting or adding other words.

**202.** (1) To an amendment, when proposed from the Chair, an amendment may be moved; but only two amendments can be proposed at the same time to a question. Some limit is necessary, and the usage has grown into law that an amendment to an amendment is allowable, but that no motion to amend further can be entertained until one of the two amendments is disposed of. There is no limit, however, to the number of amendments to a question provided they come within this principle.

(2) As the proposal of an amendment to an amendment originates a fresh subject for consideration, the new question thus created must, to prevent confusion, be disposed of by itself. An amendment, when undergoing alteration, is therefore treated throughout as if it were a substantive motion upon which an amendment has been moved. The original motion, accordingly, is laid aside; and the amendment becomes for the time a separate question to be dealt with, until its terms are settled. Palgrave 68.

(3) Since the purpose of a sub-amendment is to alter the amendment, it should not enlarge upon the scope of the amendment but it should deal with matters that are not covered by the amendment; if it is intended to bring up matters foreign to the amendment, the member should wait until the amendment is disposed of and move a new amendment.

(4) An amendment cannot be ruled out because of its vagueness. Speaker Cockburn, having to give a ruling on an amendment to the Address, on March 30, 1870, said: "the amendment is certainly very vague, but I cannot say the House cannot express a vague opinion". C.J., Vol. 3, pp. 124-5-6.

(5) No amendment is allowed to an amendment "that the House do now proceed to the Orders of the Day". (Can. C.J., Vol. 6, pp. 299-300.)

(6) It is not an amendment to a motion to move that the question go to a Committee. (Can. C.J., Vol. 63, p. 170.)

(7) An established form of amendment, such as the "six months" formula used to obtain the rejection of a Bill is not capable of amendment. M. 287.

(8) An amendment moved may, by leave of the House, but not otherwise, be withdrawn on the request of the member moving it before the House has voted on it.

(9) An amendment can only be withdrawn by the honourable member who moved it. Blackmore, 16.

(10) An amendment cannot be made, by the addition of words, to the question for reading a bill a second time. The same rule applies to the question for the Speaker's leaving the Chair or going into Committee of Supply. M. 287.

(11) An amendment proposing that a Resolution which does not require second reading be considered this day six months is out of order. (In other words, the six months' hoist only applies to "readings" or other proceedings which take place on an appointed date. It has no application to motions for direct adoption.) (H.C. Deb., 1924, Vol. 1, p. 519.

(12) An amendment proposing a direct negative, though it may be covered up by verbiage, is out of order. (Can. C.J., Vol. 48, pp. 274, 277.)

(13) An amendment to alter the main question, by substituting a proposition with the opposite conclusion, is not an expanded negative and may be moved. (Can. C.J., Vol. 60, pp. 437.)

(14) An amendment which would produce the same result as if the original motion were simply negatived is out of order. (Can. C.J., Vol. 57, p. 435.)

(15) An amendment approving part of a motion and disapproving the remainder is out of order. On the 20th October, 1932, the Prime Minister moved that the House approve a Trade Agreement entered into between Canada and the United Kingdom. An amendment was moved that the House welcomed certain terms of the Agreement and condemned several features of it. The Speaker ruled it out because (a) the portion of the amendment which approved the Agreement was useless as it suggested no change in the main motion, and also, (b), an amendment to disapprove what the main motion approves is nothing but an expanded negative. Moreover, the amendment could not be a declaration of principles because the only motions on which such a declaration can be moved are motions for the Address in reply to the Speech from the Throne, motions to go into Committee of Supply or Ways and Means and for the Second Reading of Public Bills. (Can. C.J., 71, pp. 47-48.)

**203.** (1) It is an imperative rule that every amendment must be relevant to the question on which the amendment is proposed. Every amendment proposed to be made either to a question or to a proposed amendment should be so framed that if agreed to by the House the question or amendment as amended would be intelligible and consistent with itself. M. 285.

The law on the relevancy of amendments is that if they are on the same subject-matter with the original motion, they are admissible, but not when foreign thereto. The exceptions to this rule are amendments on the question of going into supply or ways and means. B. 321-2.

(2) An amendment to the motion: That the House doth agree with the Senate in amendments to a Bill, must be relevant to said amendments. (Can. C.J., Vol. 12, p. 149.)

(3) An amendment setting forth a proposition dealing with a matter which is foreign to the proposition involved in the main motion is not relevant and cannot be moved. (Can. C.J., Vol. 60, p. 122.)

A sub-amendment which proposed an alternative to the original amendment is in order provided it is relevant to the question. (Can. C.J., Vol. 63, pp. 465, 468.)

(4) When the House has negatived a sub-amendment to strike out certain words and insert other words in a proposed amendment, it is in order to move another sub-amendment to insert other words than those offered in the original sub-amendment. (Can. C.J., Vol. 62, p. 490.)

(5) An amendment was ruled out because it raised a new question which could only be considered on a distinct motion after notice. (Can. C.J., Vol. 66, pp. 109-11.)

(6) A Resolution providing for the payment of two Commissioners to the World's Columbian Exposition having been reported from Committee of the Whole, and a motion having been made for the second reading thereof; Mr. Charlton moved in amendment that certain words be added providing for the closing of the Canadian Section on Sundays. Mr. Speaker ruled the amendment out of order, because it proposed to open a new question and therefore was not relevant to the subject-matter of the resolution and moreover a similar question was already on the Order Paper in the honourable gentleman's name. (Can. C.J., Vol. 27, p. 208.)

(7) Mr. Speaker Sproule on the 13th February, 1913, decided that a proposed amendment which was substantially the same motion as the member had moved on the address in reply to the Speech from the Throne, was not in order because "a motion must not raise a question substantially identical with one on which the House has given a decision in the same session".

(8) An amendment, substantially the same as the original motion, but omitting considerable matter of recital both of fact and law of said main motion, is in order. (Can. C.J., Vol. 4, pp. 136-8, 146.)

(9) An amendment already negatived may be put a second time if it contains additional particulars. Thompson's Mirror of Parliament No. 12, pp. 8-11.

(10) On the motion to refer a contract to a Standing Committee, a member cannot move as an amendment that the contract should be cancelled. Such an amendment is out of order because it is an expanded negative and, moreover, it raises a question which can only be considered on a direct motion after due notice. An appeal was taken from this ruling, but the House confirmed this decision by a vote of 141 to 52. (Can. C.J., Vol. 77, p. 74.)

(11) It is out of order to move, as an amendment to another question, a motion standing on the Order Paper as a notice of motion. (Can. C.J., Vol. 23, p. 214.)

(12) A member who has been given leave to withdraw an amendment may move it again at a later date. (C.J., Vol. 81, p. 260.)

When an amendment has been withdrawn, a portion of it, without any change in phraseology, cannot be moved. If the amendment offered as a substitute is a reproduction of the one which has been withdrawn with the exception of the last paragraph, it should be ruled out, as the right way to proceed would have been to move that the said last paragraph be struck out. (Can. C.J., Vol. 61, pp. 592-3.)

(13) Occasionally a motion or amendment is, by leave, withdrawn, and another motion or amendment substituted, in order to meet the views of the House, as expressed in debate: but that course can only be taken with the general assent of the House.

(14) A motion or amendment which has been withdrawn or has not been seconded, has not been submitted to the judgment of the House and may therefore be repeated. The same course

has been followed in the case of motions which have been superseded. M. 296.

(15) An honourable member having proposed an amendment, and subsequently desiring to amend the same, can only do so if the House allows the original amendment to be withdrawn, when the proposed amended amendment can be put. Blackmore, 13.

(16) Where an amendment has been proposed to a question, the original motion cannot be withdrawn until the amendment has been disposed of by being agreed to, withdrawn or negatived, as the question on the amendment stands before the original motion. U. 273-4. [In asking leave to withdraw a motion or amendment, a member is not entitled to make a speech.]

(17) After a decision has been given on an amendment to any part of a question, an earlier part cannot be amended. In like manner where an amendment of any part of a question has been proposed from the Chair an earlier part cannot be amended unless the amendment so proposed be withdrawn.

(18) When several amendments are offered at the same place in a clause, it is within the Chairman's discretion to decide which amendment he will receive. An amendment proposing to omit certain words in order to insert other words is given precedence over an amendment proposing simply to omit the same words. M. 404.

**204.** (1) No member may amend his own motion, but with leave of the House he may withdraw it and substitute another. E. Hans. (3rd series) 192 and 218. On the 20th February 1935, a member who had moved that certain fishery regulations should be rescinded, suggested, after a speech from the Acting Minister of Fisheries, that his motion might be considered by a committee. He said: "I will amend my motion to refer the matter to the Committee on Marine and Fisheries." Mr. Speaker: "I do not understand that the mover can amend his own motion." A member: "The Minister can move an amendment." The Speaker: "The honourable member cannot amend his own motion." Can. Deb. 1935, p. 1033.

(2) The rule that no member may amend his own motion is often relaxed for the benefit of Ministers of the Crown, particularly when Budget resolutions are in Committee of Ways and Means. It has now become a custom that, after these resolutions are tabled, many of the objections raised against them

are favourably considered by the Minister and, with the consent of the Opposition, the resolutions are amended within the rules governing amendments. It is hardly necessary that in these cases the Finance Minister should ask one of his colleagues to move the amendments. As the Ministers are jointly and severally responsible to the House for every measure introduced on behalf of the Government, it seems that, the resolutions being sponsored by the whole cabinet, the Minister who has moved them ought to be allowed to move any amendment when they are under consideration in the Committee of Ways and Means.

**205.** (1) It is the practice in the United Kingdom House of Commons that an amendment to a proposed amendment (called a sub-amendment in Canada) cannot be moved if it proposes to leave out all the words of such proposed amendment. In such a case the first amendment must be negatived. This rule is now accepted in Canada. On March 12, 1947, C.J. Vol. 75, p. 208; C.J. Vol. 88, p. 198; C.J. Vol. 84, p. 463.

(2) In the British Parliament, as seen in May, 13th edition, pp. 283-4, when the proposed amendment is to leave out certain words in order to insert or add others, the proceeding begins by putting the preliminary question "That the words proposed to be left out stand part of the question", and if this is resolved in the affirmative, the original question is put; if the preliminary question is negatived, the amendment is put. If this carries, the main question, so amended, is put.

"The difference in putting the question on amendments in the British and the Canadian Parliaments is one of form rather than substance. In both assemblies an opportunity is given of voting on an amendment and then on the question as amended. The House is called upon to decide as between the words proposed to be left out and the words proposed in substitution therefor. If the amendment is negatived the words proposed to be left out remain in the question and cannot be amended. The statement in Bourinot (p. 318) that sub-amendments can be moved is qualified by the conditions that those sub-amendments are in order which would limit them to the addition of words at the end of the question." Sir S. Lonsdale Webster, Clerk of the British House, in a letter to the Clerk of the Canadian House, Oct. 26, 1926.



**206.** The Canadian House of Commons sustained, on the 29th of June, 1926, by a vote of 115 to 114 the Speaker's ruling that the House had the right to cancel words which it had previously decided should not be struck out of an amendment in order to insert other words. Can. C.J., 1926, pp. 488-493.

The House having decided to add certain words to a motion, it is not in order to move to strike out those words, or any of them, but here again other words may be added. Such words, however, may not be to the same effect as other words struck out by a former amendment. (Can. C.J., Vol. 9, pp. 197, 199, 200.)

In Canada the House, reversing the Speaker's decision, decided that, although a sub-amendment moved in substitution of a proposed amendment has been defeated as a substitute, it may be moved again as an addition to the said amendment. C.J. Vol. 63, p. 472, 475, 477.

When an amendment is proposed to strike out all the words after "that" in the original question in order to substitute other words, and a sub-amendment is moved to substitute other words than those offered in the amendment, the Speaker must submit the three propositions in the reverse order in which they were moved, taking first the sense of the House on the sub-amendment. (Can. C.J., Vol. 62, pp. 81-2.)

**207.** A sub-amendment on the Address in Reply to the Speech from the Throne may be moved subject to the same rules as any other amendment. It must be relevant to the amendment and cannot raise a new issue. Great latitude is allowed in this debate. If the amendment and the sub-amendment both take exception to the Government's financial policy and the former refers to customs duties, the latter is in order if it refers to income tax or any other mode of collecting revenue; but if the amendment deals with conscription a sub-amendment dealing with tariff is irregular.

A proposition which may be moved as an amendment to the main motion may be out of order if moved as a sub-amendment. On the 9th March 1937, the leader of the Opposition moved to add the following words to the Address: "this House regrets that the Government has failed to take effective measures to deal with the problem of unemployment". The leader of the Social Credit group moved to add to this amendment: "and that this House regrets the action of the Government in passing Order-in-Council P.C. 2202 which in effect deprived the Western farmers of the privilege of selling to

the Wheat Board unless the price of wheat dropped to below ninety cents per bushel for wheat graded as Number One Northern at Fort William". The Speaker ruled out the amendment to the amendment as there was nothing on the face of it to show that it intended to amend the amendment. (Can. J., Vol. 75, p. 208.)

**208.** When a motion, an amendment and an amendment to the amendment have been proposed, the Speaker will first take the sense of the House on the last by saying: "Is it the pleasure of the House to adopt the amendment to the amendment?" After this has been disposed of, another may be moved as soon as the Speaker has proposed the question: "Is it the pleasure of the House to adopt the amendment (or the amendment as amended) to the main motion?" After this has been disposed of, the Speaker will propose: "Is it the pleasure of the House to adopt the motion (or the motion as amended)?" Then a member may move another amendment. Any number of amendments may be proposed in this way.

**209.** Papers are laid before the House in pursuance of

- (1) Provisions of an Act of Parliament;
- (2) An order of the House;
- (3) An address to the Crown;
- (4) The command of the Crown;
- (5) Standing orders of the House.

(1) The papers brought down in pursuance of Acts of Parliament are mostly reports, accounts and other documents which, under statutory provisions, are required to be laid before Parliament.

(2) Papers may be directly ordered when they relate to canals and railways, post offices, customs, militia, fisheries, public works, agriculture, surveying, mining, public printing, foreign affairs, dismissal of public officers, and other matters under the immediate control and direction of the different Departments of the Dominion, correspondence with persons in the employ of the Government and in possession of a Department; petitions addressed to a particular Department; returns by the Chief Electoral Officer showing the number of votes polled in electoral districts and other facts as to a general or other election; memorials to heads of Departments or bodies immediately under the control of a Department; returns relative to the business of the House.

(3) Addresses are moved for papers and despatches from the Imperial government; for orders in council; for correspondence between the Dominion, British and foreign governments, or between the Dominion and provincial governments, or between the Dominion and any company, corporation or individual; for information respecting a royal commission; for instructions to the Governor-General; for memorials and other papers relating to the government of the territories; for petitions and memorials not in the possession of the House but addressed to the Governor in Council and including statements for public aid; for returns of petitions of right and cases before Supreme and Exchequer Courts; for returns relative to the trial of election cases before judges; for statements of the expenses of returning officers and candidates at elections; for returns relative to the administration of justice and the judicial conduct of judges; for papers in the possession of harbour commissioners; for returns respecting confidential printing when such printing is done by order in council; for papers relative to the exercise of the prerogatives of the Crown.

The general rule is that information to be obtained from or through any department constituted or regulated by statute, is obtained by means of an order, whilst information to be obtained from or through the Privy Council, is obtained by means of an address.

(4) Papers are frequently presented to Parliament by command of the Crown, without any application from the House.

When a Minister of the Crown desires to lay on the table a return which is not the subject of an order, but is necessary for the proper decision of some question, the rule is for him to move for its production, and then, on the order being made, to bring it down immediately. B. 244.

(5) Papers which must be laid before the House in pursuance of S.Os. 47 and 81 are usually brought down without any formality, by being either laid on the table or sent to the Parliamentary Papers' office.

**210.** Certain papers have been refused in the Canadian Commons on the ground that "the Governor-General, acting as an active officer of the Imperial Government, reserves to himself the right of withholding from Parliament any documents the publication of which might in his judgment, be prejudicial to the public service." B. 251. This rule would not apply to-day as the Governor-General is now the King's personal

representative and not an officer of the United Kingdom Government.

**211.** When it is discovered that an address has been ordered for papers which should properly have been presented to the House by order, the error is corrected by discharging the order for the address and ordering that the papers be laid before the House. In the same manner, when a return has been ordered, for which an address ought to have been moved, the order is discharged and an address is presented instead. M. 621.

**212.** Where an order for a return is found not to comprise all the particulars desired, it is usual to discharge the order, and make another in a corrected form. Sometimes, however, without discharging the order, public papers or other particulars have been ordered to be added to the return, or the order for the return has been read and amended. M. 621.

Similarly a resolution for an address has been read, and another address ordered for additional information, or an address has been ordered asking that the information, previously addressed for, may be extended to include additional information. M. 621.

An order has been made that certain particulars specified in an order for a return shall be separately stated, while an order for a return, or so much of an order as related to certain portions of a return, has been discharged. M. 621-2.

The addition of particulars to a return, not specified in the order of the House of Commons, has been ruled by Mr. Speaker to be an irregularity. M. 623, 338 4 D. 3s. 1717.

Orders of a former session relating to papers are also amended, or otherwise dealt with, as circumstances may require. 622.

If one House desires any return relating to the business or proceedings of the other, neither courtesy nor custom allows such a return to be ordered; but an arrangement is generally made, by which the return is moved for in the other House; and after it has been presented, a message is sent to request that it may be communicated. M. 622.

**213.** If parties neglect to make returns in reasonable time, they are ordered to make them forthwith; or so much of returns as has not been made. If they continue to withhold them, they are ordered to attend at the bar of the House; and unless they

satisfactorily explain the causes of their neglect, and comply with the order of the House, they will be censured or punished according to the circumstances of the case. M. 623.

A motion for a return may be opposed on the ground of public policy, such as that the disclosure of the information sought is not for the public interest, or that its supply would involve unreasonable labour or expenses. Man. 215.

**214.** On the 5th of May, 1887, the House of Commons passed the following resolution:

“Resolved, That the practice now in force, requiring the withholding of Blue Books and Departmental Reports till the assembling of Parliament, results in the suppression, often for periods of many months, of information relating to public affairs which the public interests require should be promptly made public.

“That the Blue Books and Departmental Reports for each fiscal or calendar year should in future be made public as soon as practicable after the same are prepared, and that no unnecessary delay should be permitted to interfere with the issuing of the same.

“That the Finance Department cause to be inserted in the ‘Canada Gazette’, at the close of each month, a statement of Revenue and Expenditure for the month, and also for the unexpired portion of the fiscal year, distinguishing between expenditure upon Capital Account and expenditure on account of Consolidated Fund, and giving statement of gross debt and net debt.

“That the Customs Department cause to be inserted in the ‘Canada Gazette’, at the close of each month, a statement of exports, imports, immigration and navigation for the month, and also for the expired portion of the fiscal year.

“That the Department of Railways cause to be inserted in the ‘Canada Gazette’ each week, a statement showing the gross and the net earnings of each of the Government Railways for the preceding week, and also, for the expired portion of the fiscal year.”

On the 16th of June, 1887, the Joint Committee of both Houses on the Printing of Parliament included the following in its Fifth Report:

“Resolved, That it be urged upon the several Departments of the Government the prompt publication of their Annual Reports and other Blue-books, so that they may be distributed as early as possible before each Session, in accordance with the Resolution of the House of Commons, as passed during the present Session, on the 5th day of May, 1887.”

This is not one of those resolutions which lapse when the House is prorogued. It is still operative.

**215.** The custody of all papers and files is entrusted to the Clerk of the House and it is “at his peril” if he suffers any of them to be taken away without leave of the House. As the number of reports and returns laid on the table is too large for the Clerk to handle, a special Branch was set up for that purpose in 1929. It keeps a register of all papers tabled and records the names of the Members of Parliament who may take them out. The general public may consult these papers in the presence of these clerks. Every member who takes out a report or return must sign the register. There are on the ground floor of the Parliament building three large vaults with iron doors and combination locks for the safe-keeping of these papers. Once a document has been placed on the table and recorded in the Journals, it becomes the property of the House.

**216.** (1) The “previous question” means the question whether the main issue shall be voted or not at once.

(2) The previous question prevents an amendment to the main question and thus forces a direct vote on the main question. B. 327.

(3) Members who have spoken to the main motion or amendments may again speak to the previous question. Debate on Address, C. Com. 1926.

(4) The members proposing and seconding the previous question generally vote in its favour, but there is no rule to prevent them voting against their own motion (B. 327), if their intention is to supersede the question.

(5) The debate on the previous question is subject to closure. Debate on Address, Can. Com. 1926.

**217.** (1) The previous question has been moved upon the various stages of a bill, but it cannot be moved upon an amendment, though, after an amendment has been agreed to, the

previous question can be put on the main question as amended. B. 327.

(2) No amendment can be proposed to the previous question.

(3) There is nothing in the rules to prevent the previous question being brought forward again at a later sitting.—Red.

(4) The previous question cannot be moved upon a motion relating to the transaction of public business or the meeting of the House. M. 276.

(5) A motion for the previous question is not admitted in a Committee of the Whole or any Select Committee of the House. B. 328. M. 253, 442, note 8.

(6) The motion for the previous question may be superseded by a motion to adjourn or for reading the orders of the day. But such a motion cannot be made if the House resolves that the question shall now be put under this rule. It is also in order to move the adjournment of the debate on the previous question but not if the House decide that the question be put. B. 327, 328.

**218.** The previous question must not be phrased in explanatory terms giving reasons for its introduction. It is moved in the following words: "That the question be now put." On the 2nd November, 1932, when the House was debating a motion for the approval of a Trade Agreement between Canada and the United Kingdom, a member moved that the motion be amended by adding the following: "That this motion be not put until the fiscal changes proposed by the rates set forth in Schedule E attached to said agreement and forming a part thereof, which schedule of rates has been referred by this House to the Committee of Ways and Means, have been considered in said Committee." The Speaker said: "The proposed amendment is out of order. This is not a motion which can be amended by stating any special reason for not agreeing to the principle of the question or being opposed to its progress. To move that it be now put is not an amendment. If it is desired that the question be not now put, it is open to any honourable member to move the previous question and to vote it down under Standing Order 55." (Can. C.J., Vol. 71, p. 72.)

**219.** (1) When the previous question is moved on the third reading of a Bill and voted in the negative, the main motion must be dropped, as the reading of a Bill cannot be placed on the Order Paper unless a day has been appointed there-

for by the House. This is made clear by Standing Order 78 which provides that when a Bill is reported without amendment from the Committee of the Whole it is forthwith ordered to be read a third time at such time as may be *appointed* by the House. When the House votes against the previous question it decides that the main question cannot be now put and, unless further action is taken, no date is appointed for the third reading of the Bill. No authorization is given the Clerk to place the main motion on the Order Paper. The Bill is not killed by this procedure and it may be taken up again at a later date. The decision of the House is only that the question be not *now* put. Another day may be appointed for its consideration, which can be done by a motion without notice, under Routine Proceedings at the next sitting of the House.

(2) If the previous question be carried, the Speaker will immediately put the question, without further debate. But if the previous question be resolved in the negative, then the Speaker cannot put the main motion which is consequently superseded, but which, however, may be revived on a future day as the negative of the previous question merely binds the Speaker not to put the main question at that time. B. 326.

**220.** (1) An instruction is a motion empowering a committee to do something which it could not otherwise do, or to direct it to do something which it might otherwise not do. It directs the order and course of the committee's proceedings and extends or restricts the order of reference according to the discretion of the House. If the subject-matter of an instruction is within the scope of the question referred to the committee then such instruction is useless and irregular. Committees, in case of doubt, may ask instructions from the House as to the course they should take with reference to the matters under their consideration. An instruction to the Committee of Supply cannot be moved.

(2) "On May 5, 1893, the Speaker of the Commons of the United Kingdom laid down the following rulings with reference to the instructions: 'The principles which guide a limit in the system of instructions on going into Committee may be thus stated: First, an instruction must empower the Committee to do something which the Committee is not otherwise empowered to do. Secondly, the purpose of the instruction must be supplementary and ancillary to the purpose of the Bill, and must fall within the general scope and framework of the Bill. Thirdly,



it is irregular to introduce into a Bill, by an instruction to the Committee, a subject which should properly form the substance of a distinct measure, having regard to usage and the general practice of enacting distinct statutes for distinct branches of law.' " (Ilbert, p. 102.)

**221.** (1) The object of a *permissive* instruction, which is the more ordinary form, is to confer on the Committee authority to do something which, without the instruction, they would have no power to do, for example, to divide a bill into two bills, to consolidate two bills into one, or to extend the scope of a bill. Instructions of this kind merely empower the Committee to take the course of action specified, leaving it to the discretion of the Committee whether or not they exercise the power. M. 15, p. 478.

(2) The object of *mandatory* instructions is to define the course of action which the Committee must follow. This form of instruction is often moved at the conclusion of the second reading, to which assent may have been given with the knowledge that such an instruction would be moved. M. 15, pp. 478-9.

**222.** An instruction which is generally made when a Bill is referred to a Committee of the Whole, a Standing Committee or a Joint Committee, is not mandatory, and it is therefore customary to state explicitly in the motion that the Committee "have power" to make the provision required. The intention is to give a Committee power to do a certain thing if they think proper, not to command them to do it. The Committee is not bound to obey the instruction. (See Can. C.J., 1882, pp. 248-9. Presbyterian Bill.) The time for moving an instruction is immediately after the committal of the Bill, or subsequently as an independent motion. The right theory is not that the instruction should be given whilst the Bill is still in the possession of the House, but rather after it has come in the possession of the Committee. No instruction can be given to a Committee on a matter which has not been referred to it. It should therefore be moved after the motion to refer the Bill has been passed and before the Speaker leaves the Chair. If the Bill has been partly considered in Committee at a previous sitting, it is not competent to propose an instruction when the order is read for the House "again in Committee".

**223.** Instructions may be given not only to a Committee of the Whole House, except the Committee of Supply, but to

any other committee. A mandatory instruction may be given to a select committee or to a committee on a private bill. M. 15, p. 517. Any number of instructions may be moved successively to a committee on the same bill, as each question for an instruction is separate and independent of every other. An instruction cannot be moved to make any provision which imposes a tax or charge upon the people.

**224.** A mandatory instruction can be given to a joint committee only with the concurrence of both Houses. If either House gives a mandatory instruction to a select committee appointed to join with a committee of the other House, but no corresponding instruction is given by the other House to its Committee, the instruction, though binding upon the members appointed to serve on the joint committee by the first House, is not binding on the joint committee, as a committee. In order to avoid the embarrassment that the giving of a unilateral instruction would cause, it is desirable, before a mandatory instruction is given by either House to a select committee appointed to join with a committee of the other House, for that House to come to a resolution affirming the expediency of giving the instruction in question to the joint committee, and to communicate it to the other House with a request for the latter's concurrence. M. 15, p. 644.

**225.** All instructions must be moved on the first occasion when the order for the committee on the Bill has been read. If the Bill has been partly considered in Committee at a previous sitting, it is not competent to propose an instruction when the order is read for the House "again in Committee," as the rules require that the Speaker leave the Chair (without putting the question) as soon as that order has been taken up. B. 517.

**226.** (1) An instruction cannot be given to the Committee of Supply. On the 5th February 1934, motion was made for the Speaker to leave the Chair for the House to go into Committee of Supply. A member moved in amendment that all the words after "that" be struck out and the following substituted therefor: "this House is of the opinion that when it is moved into Committee of Supply priority should be given to a consideration of the Estimates of the Department of Labour in order that opportunity may be afforded for an immediate discussion and consideration of conditions of unemployment and distress at present existing in all parts of Canada, and of the measures

required to cope therewith". The Speaker said: "I find in May, 13th Edition, page 524, the following: 'An instruction to the Committee of Supply cannot be moved.' It seems to me that is the effect of the present amendment." I therefore declare the amendment out of order. (Can. C.J., 73, p. 77; Can. Deb. 1935, pp. 496-497.)

(2) "The subject-matter of a Bill, as disclosed by the contents thereof, when read a second time, has, since 1854, formed the order of reference which governs the proceedings of the committee thereon, and accordingly the objects sought by an instruction should be pertinent to the terms of that order; and the amendments, which an instruction proposes to sanction, must be such as would further the general purpose and intention of the House in the appointment of the committee. The object of an instruction is, therefore, to endow a committee with power whereby the committee can perfect and complete the legislation defined by the contents of the Bill, or extend the provisions of a Bill to cognate objects; and an attempt to engraft novel principles into a Bill, which would be irrelevant, foreign, or contradictory to the decision of the House taken on the introduction and second reading of the Bill, *is not within the due province of an instruction*. Accordingly, an instruction can be moved that authorizes the introduction of amendments into a Bill which extend its provisions to objects not contained therein, if those objects are relevant to the subject-matter thereof, or which would augment the legislative machinery whereby the Bill is to be put into force; whilst, on the other hand, no instruction is permissible which is irrelevant, foreign, or contradictory to the contents of the Bill, or that seeks the subversion thereof, by substituting another scheme for the mode of operation therein prescribed." (M., pp. 398-399.)

A member cannot under the guise of an instruction interfere with the work of a committee which has not yet reported.



## CHAPTER VIII

### DEPUTY SPEAKER; COMMITTEES OF THE WHOLE; SUPPLY; WAYS AND MEANS

ELECTION OF DEPUTY SPEAKER.  
TERM OF OFFICE.  
OFFICIAL LANGUAGES.  
DEPUTY CHAIRMAN OF COMMITTEES.  
ORDER FOR HOUSE IN COMMITTEE OF THE WHOLE.  
PRIVATE BILLS REFERRED TOGETHER.  
BILLS RETAINING PRECEDENCE.  
COMMITTEES OF SUPPLY AND WAYS AND MEANS.  
ORDER FOR HOUSE IN SUPPLY.  
LEAVING THE CHAIR ON CERTAIN DAYS.  
SIX MOTIONS FIRST ORDER ON MONDAY.  
APPOINTED DAYS.  
DEBATE ON MOTION TO LEAVE THE CHAIR.  
DEBATE NOT CONCLUDED ON TUESDAY.  
QUESTION PUT ON AMENDMENTS.  
SECOND MOTION PROPOSED.  
QUESTION ON MAIN MOTION.  
DEPARTMENTS FIRST TAKEN UP.  
INTERIM SUPPLY AND SUPPLEMENTARY ESTIMATES.  
ESTIMATES REFERRED TO COMMITTEES.  
ORDER FOR COMMITTEE OF WAYS AND MEANS.  
BUDGET DEBATE.  
STANDING ORDERS OF HOUSE OBSERVED IN COMMITTEES OF THE WHOLE.  
RELEVANCY.  
SPEECHES LIMITED TO THIRTY MINUTES IN COMMITTEE OF THE WHOLE.  
ORDER MAINTAINED BY CHAIRMAN.  
ORDER TO LEAVE THE CHAIR AND INTERMEDIATE PROCEEDINGS.  
RESOLUTIONS CONCURRED IN FORTHWITH.  
COMMONS ALONE GRANT AID AND SUPPLIES.  
PECUNIARY PENALTIES IN SENATE BILLS.

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### STANDING ORDERS

52. [10th February, 1885; 22nd March, 1927]. (1)  
A Chairman of Committees who shall also be Deputy Speaker of the House shall be elected *at the commencement of every Parliament*; and the member so elected shall, if in his place in the House, take the Chair of all committees of the whole, including the committees of Supply, and Ways and Means, in accordance with the usages which regulate the duties of a similar officer, generally designated the Chairman of the Committee of Ways and Means in the House of Commons of the United Kingdom of Great Britain and Northern Ireland.

(2) The member elected to serve as Deputy Speaker and Chairman of Committees shall be required to possess

the full and practical knowledge of the official language which is not that of Mr. Speaker for the time being.

(3) The member so elected as Deputy Speaker and Chairman of Committees shall continue to act in that capacity until the end of the parliament for which he is elected, and in the case of a vacancy by death, resignation or otherwise, the House shall proceed forthwith to elect a successor.

(4) In the absence of the Deputy Speaker and Chairman of Committees of the House, Mr. Speaker may, in forming a committee of the whole House, before leaving the Chair, appoint any member chairman of the committee.

(5) At the commencement of every session, or from time to time as necessity may arise, the House may appoint a Deputy Chairman of Committees who shall, whenever the Chairman of Committees is absent, be entitled to exercise all the powers vested in the Chairman of Committees including his powers as Deputy Speaker during Mr. Speaker's unavoidable absence.

53. [12th July, 1955]. Except as provided in standing orders 56 and 58, when an order of the day is read for the House to resolve itself into any committee of the whole, the question "That Mr. Speaker do now leave the Chair" shall be decided without debate or amendment.

54. [10th July, 1906; 12th July, 1955]. (1) All private bills reported to the House by standing committees may, on one motion, be referred together to a committee of the whole House and such committee may consider and report upon one or more such bills at the same sitting.

(2) Any bill not considered by the committee before the expiry of the time provided for the consideration of such bills shall retain its precedence and be placed on the order paper as having been ordered for consideration in committee of the whole at the next sitting of the House.

55. [29th March, 1876; 22nd March, 1927]. The House shall appoint the Committees of Supply, and Ways and Means, *at the commencement of every session*, so

soon as an address has been agreed to, in answer to His Excellency's speech.

56. [24th April, 1913; 12th July 1955]. (1) On Wednesdays, Thursdays and Fridays, when the order of the day is called for the House to go into Committee of Supply, Mr. Speaker shall leave the Chair without question put, provided that, except by the unanimous consent of the House, the estimates of each department shall be first taken up on a Monday or a Tuesday.

(2) On the first six occasions in any session upon which an order for Supply is called for the purpose of moving, "That Mr. Speaker do now leave the Chair", it must stand as the first order of the day on a Monday. If a debate on any of the said six motions be not concluded on Monday, the order for the resumption of that debate shall be set down as the first order of the day for the next Tuesday sitting.

(3) Notwithstanding the provisions of standing order 15 (3), a Minister of the Crown may request at a prior sitting that any Monday after an Address has been agreed to, in answer to His Excellency's speech, be appointed for the consideration of the order for Supply and, thereupon, the said Monday shall be deemed to have been so appointed.

(4) (a) No debate on any motion "That Mr. Speaker do now leave the Chair" for the House to go into Committee of Supply and on any amendments proposed thereto, except as hereinafter provided, shall exceed two sitting days.

(b) Should a debate on any of the first five of the said six motions be concluded before the expiry of the two sitting days allowed for each debate, the unused time may be added in whole or in part to the two-day allowance for debate on the next or on any subsequent one of the said six motions to go into Supply.

(c) When a debate on any of the said six motions is not concluded on a Tuesday because unused time in a former debate has been carried forward, the provisions of section (1) of this standing order shall be suspended and the order for the resumption of any such debate may be called on any government day.

(d) If any amendment be under consideration at 8.15 o'clock p.m. on the second day of any debate or at the beginning of the two-hour period before the expiry of time carried forward from a former debate, as the case may be, Mr. Speaker shall interrupt the proceedings and forthwith put the question on any amendment or amendments then before the House.

(e) When a motion "That Mr. Speaker do now leave the Chair" is superseded by the adoption of an amendment at any time before the expiry of either the said two days or the time carried forward from a former debate, at the case may be, a like motion may be forthwith made by a Minister of the Crown. In the event of any such motion being proposed, the proceedings thereon shall be deemed to be an extension of the debate concluded by the adoption of the said amendment; provided that the second motion shall not be subject to amendment if it is proposed after the time specified in section (4) (d) of this standing order.

(f) At ten o'clock p.m. on the second day of any debate or at the expiry of the time carried forward from a former debate, as the case may be, unless the said debate be previously concluded, Mr. Speaker shall interrupt the proceedings and forthwith put every question necessary to dispose of the main motion; and, if it be decided in the affirmative, the House shall forthwith resolve itself into Committee of Supply.

(5) When the House resolves itself into Committee of Supply in pursuance of the adoption of each of the said six motions, the estimates of the several departments of government shall be forthwith first taken up and entered for consideration, as follows:

- (a) six departments on the first occasion;
- (b) three departments on each of the next four occasions;
- (c) all other departments on the sixth occasion.

(6) Notwithstanding the provisions of section (1) of this standing order, when an order of the day is called for the House to go into Committee of Supply to consider either interim supply or supplementary estimates, Mr. Speaker shall leave the Chair without question put.



57. [12th July, 1955]. A motion, to be decided without debate or amendment, may be made without notice during routine proceedings by a Minister of the Crown withdrawing any item or items in the estimates from the Committee of Supply and referring the same to any standing or special committee and, upon report from any such committee, the said item or items shall stand referred to the Committee of Supply.

58. [12th July, 1955]. (1) When an order of the day is called for the House to go into Committee of Ways and Means, Mr. Speaker shall leave the Chair without question put, but the provisions of this section shall not apply when the said order is called for the purpose of enabling a Minister of the Crown to make the budget presentation.

(2) The proceedings on the order of the day for resuming debate on the motion "That Mr. Speaker do now leave the Chair" for the House to resolve itself into Committee of Ways and Means (Budget) and on any amendments proposed thereto shall not exceed eight sitting days.

(3) When the order for resuming the said debate is called, it must stand as the first order of the day and, unless it be disposed of, no other government order shall be considered in the same sitting.

(4) On the fifth of the said days, if a subamendment be under consideration at fifteen minutes before the ordinary time of daily adjournment or, when the fifth day is a Friday, at 4.45 o'clock p.m., Mr. Speaker shall interrupt the proceedings and forthwith put the question on the said subamendment.

(5) On the seventh of the said days, if an amendment be under consideration at fifteen minutes before the ordinary time of adjournment or, when the seventh day is a Friday, at 4.45 o'clock p.m., Mr. Speaker shall interrupt the proceedings and forthwith put the question on the said amendment.

(6) On the eighth of the said days, at fifteen minutes before the ordinary time of daily adjournment or, when the eighth day is a Friday, at 4.45 o'clock p.m., unless the debate be previously concluded, Mr. Speaker shall interrupt the proceedings and forthwith put the question

on the main motion; and, if it be decided in the affirmative, the House shall forthwith resolve itself into Committee of Ways and Means.

59. [20th December, 1867; 10th July, 1906; 25th April, 1910; 22nd March, 1927; 12th July, 1955]. (1) The standing orders of the House shall be observed in the committees of the whole House so far as may be applicable, except the standing orders as to the seconding of motions, limiting the number of times of speaking and the length of speeches.

(2) Speeches in committee of the whole House must be strictly relevant to the item or clause under consideration.

(3) No member, except the Prime Minister and the Leader of the Opposition, shall speak for more than *thirty* minutes at a time in any committee of the whole House.

(4) The Chairman shall maintain order in the committees of the whole House, deciding all questions of order subject to an appeal to the House; but disorder in a committee can only be censured by the House, on receiving a report thereof.

60. [20th December, 1867; 22nd March, 1927]. A motion that the Chairman leave the Chair is always in order, shall take precedence of any other motion, and shall not be debatable.

Such motion, if rejected, cannot be renewed unless some intermediate proceedings has taken place.

61. [20th December, 1867]. If any motion be made in the House for any public aid or charge upon the people, the consideration and debate thereof may not be presently entered upon, but shall be adjourned till such further day as the House thinks fit to appoint; and then it shall be referred to a committee of the whole House, before any resolution or vote of the House do pass thereupon.

62. [12th July, 1955]. Whenever a resolution is reported from any committee of the whole, a motion to concur in the same shall be forthwith put and decided without debate or amendment.

63. [20th December, 1867]. All aids and supplies granted to Her Majesty by the Parliament of Canada, are the sole gift of the House of Commons, and all bills for granting such aids and supplies ought to begin with the House, as it is the undoubted right of the House to direct, limit, and appoint in all such bills the ends, purposes, considerations, conditions, limitations and qualifications of such grants, which are not alterable by the Senate.

64. [20th December, 1867]. In order to expedite the business of Parliament, the House will not insist on the privilege claimed and exercised by them, of laying aside bills sent from the Senate because they impose pecuniary penalties; nor of laying aside amendments made by the Senate because they introduce into or alter pecuniary penalties in bills sent to them by this House; provided that all such penalties thereby imposed are only to punish or prevent crimes and offences, and do not tend to lay a burden on the subject, either as aid or supply to Her Majesty, or for any general or special purposes, by rates, tolls, assessments or otherwise.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**227.** (1) The Speaker shall preside at all meetings of the House of Commons. (B.N.A. Act, Sec. 46.) Whenever the Speaker of the House of Commons, from illness or other cause, finds it necessary to leave the Chair during any part of the sittings of the House, on any day, he may call upon the Chairman of Committees, or in his absence, upon any member of the House, to take the Chair and to act as Deputy-Speaker during the remainder of such day, unless he himself resumes the Chair before the closing of the sittings for that day. (R.S.C. 1952.)

(2) Whenever the House is informed by the Clerk at the Table of the unavoidable absence of the Speaker, the Chairman of Committee, if present, shall take the Chair and shall perform the duties and exercise the authority of the Speaker in relation to all the proceedings of the House, until the meeting of the House on the next sitting day, and so on from day to day on the like information being given to the House until the House otherwise orders: Provided that if the House adjourns for more than twenty-four hours, the Deputy-Speaker shall continue to perform the duties and exercise the authority of Speaker for twenty-four hours only after such adjournment.

(3) If at any time during a Session of Parliament the Speaker is temporarily absent from the House, and a Deputy-Speaker thereupon performs the duties and exercises the authority of Speaker, as hereinbefore provided, or pursuant to the Standing Orders or other order, or a resolution of the House, every act done and proceeding taken in or by the House, in the exercise of its power and authority, shall be as valid and effectual as if the Speaker himself were in the Chair.

(4) Every act done, and warrant, order or other document issued or published by such Deputy-Speaker in relation to any proceedings of the House of Commons, or which under any statute would be done, issued, signed or published by the Speaker if then able to act, shall have the same effect and validity as if the same had been done, issued, signed or published by the Speaker for the time being.

(5) Should the Speaker return to the Chamber during the sitting, he would be bound to take the Chair and perform his official duties until the adjournment of the House.

(6) When the Speaker is absent, the Sergeant enters the House with the mace, which he places upon the Table. The Clerk informs the House of the Speaker's unavoidable absence, and if necessary, of that of the Chairman of Ways and Means. The Chairman of Ways and Means, or in his absence the Deputy Chairman, then takes the Chair. If the House subsequently goes into Committee, he takes the Chair thereof. When the question for reporting from the Committee has been agreed to, he returns to the Chair of the House, and a member makes to him the report of the Committee.

**228.** (1) The Committee of the Whole is, in fact, the House itself presided over by a Chairman instead of by the Speaker. It is appointed by resolution, that the House do immediately, or on a future day, resolve itself into a Committee of the whole House. The Chairman takes the Chair at the table and the mace is removed from the Table and placed under it.

(2) The chief accompanying circumstances in the passage from the House to Committee of the Whole are: 1. The Chairman is changed. In place of the Speaker, the Chairman of Committees or Deputy Speaker presides, sitting in the Clerk's chair at the Table. The Speaker and the Clerk are supposed to leave the Chamber; in certain legislatures, they are bound to go out and they only return when the committee rises or makes a report. 2. The mace is placed "under the Table", really on stays at the lower end of the Table. 3. The Chairman takes the Clerk's chair at the upper end of the Table. The Speaker's chair remains empty. 4. The Clerk Assistant is the Clerk of the committee and he takes minutes of its proceedings.

(3) Whenever the Chairman, from illness or other cause, finds it necessary to leave the House, he may call upon any member to take the Chair for the remainder of the sitting unless he himself returns before the committee rises. The acting Chairman may himself call upon any member to take his place. As a matter of fact, any member of the House may preside over a Committee of the Whole. The quorum of the committee is the same as that of the House, namely, twenty.

**229.** (1) When an amendment for the Speaker's leaving the Chair has been negatived, no further amendment can be

moved thereto; though general debate on the main question can be maintained by those members who have not exhausted their right to speak to that question. M., 527.

If the amendment is withdrawn, however, another amendment can be at once submitted to the House. B. 420.

(2) On the 12th of July 1895, Mr. Laurier (later Sir Wilfrid) replying to Sir Charles Tupper who had contended that amendments to the motion that the Speaker leave the Chair for the House to go into Committee of Supply constituted a direct challenge of the conduct of the Government, said: "The Honourable gentleman has taken the ground that almost of necessity such amendments carry with them a vote of want of confidence in the government. This assertion can be maintained neither in law nor in the practice of this Parliament. Of course there are motions which by themselves carry censure, and such motions would necessarily imply want of confidence in the Administration. But when the motion presented is such as this motion, affirming a general principle, not particularly calling in question any practice or action of the Government, it does not carry with it want of confidence, unless, indeed, it is made so by the will of the Administration. If the Administration cares to do so, it always has the power to declare that a motion moved in amendment to go into Committee of Supply is a motion of want of confidence; they have the power, and it follows they can take that course."

**230.** (1) The ordinary function of a Committee of the Whole House is deliberation, not enquiry. All matters concerning the imposition of taxes, or the grant of public money, must be considered in Committee, as a preliminary to legislation; any other questions which, in the opinion of the House, may be more fitly discussed in committee, are dealt with in that manner. The provisions of public bills are usually considered in a Committee of the Whole House. M. 448.

(2) A Committee of the Whole House has no power either to adjourn its own sittings or to adjourn its consideration of any matter to a future sitting. If its consideration of a matter be not concluded, or if all the matters referred to it have not been considered, the Chairman is directed to report progress and ask leave to sit again.

So entirely is the principle of adjourning debates in Committee of the Whole House ignored, that when resolutions have been proposed and progress reported before they were agreed to,

resolutions upon other distinct matters have been proposed and agreed to at ensuing sittings of the committee, and the resolutions first proposed taken up again on a more distant day. (M. 453-4.)

(3) If the committee has agreed to certain resolutions, but is unable to conclude the discussion of other resolutions, it is customary to direct the Chairman to report the former, and to report progress upon the resolution under consideration, when the proceedings of the committee are brought to a close.

**231.** (1) A message from the Governor-General, summoning the House to attend him in the Senate Chamber will require the Committee of the Whole to rise and the Speaker to resume the Chair immediately.

(2) When there is an outbreak of disorder in committee by which the honour and dignity of the House are affected, the Speaker may take the Chair immediately without awaiting the ordinary forms.

(3) If an occasion of public business arises in which the House is concerned, the Speaker resumes the Chair at once without any report from the committee. When the incident which has occasioned the interruption of the sitting has been dealt with, the House forthwith resolves itself again into the committee.

**232.** (1) From the Chairman's decision no appeal should be made to the Speaker. M. 449.

In case of an appeal to the House, it is the duty of the Chairman to leave the Chair immediately and report in writing the point of order which he has decided. The Speaker must then submit the matter to the determination of the House in the language reported to him and put the question. "That the decision of the Chairman be confirmed." No discussion is allowed on the appeal. Should the Speaker be absent, the Chairman takes the Chair of the House and another member makes the report of appeal to the acting Speaker who will at once submit the question to the House for its decision.

(2) If a member wishes at any time to call in question the conduct of the Chairman in the execution of his duties, the proper course is to give notice of a motion to that effect in due course. B. 397. Blackmore, p. 55. Decision of Speaker Peel, July 12, 1893.

(3) If the Chairman of Ways and Means resigned the Chair during the sitting of Parliament, he either personally announces his retirement to the House or addresses a letter to the Speaker making the announcement. In the former case observations are made by the ministerial and opposition leaders. M. 15th ed., p. 239. This applies also to the Chairman of any of the three Committees of the Whole.

**233.** It is one of the old standing principles of our constitution that the House of Commons should control the finances of the country. That is the right, privilege and duty of the House. It has been achieved by means of struggle lasting through centuries, beginning from the fourteenth century down to the seventeenth century, when it was fully confirmed, and since then it has never been disputed.

The cardinal principle on which the whole of our financial system is based is that of parliamentary control, and by this is understood not the control of Parliament in its constitutional sense, but control by the Commons alone. Upon this fundamental principle, laid down at the very outset of English parliamentary history and secured by three hundred years of mingled conflict with the Crown, and peaceful growth, is grounded the whole law of finance and, consequently, the whole of the British Constitution. Durell.

The right, privilege and power of the Canadian House of Commons are the same as those of the United Kingdom House and they were stipulated in the first sentence of the British North America Act which reads as follows: "Whereas the Provinces of Canada, Nova Scotia and New Brunswick have expressed their desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland, *with a Constitution similar in Principle to that of the United Kingdom.*"

**234.** The ancient doctrine that the redress of grievances should be considered before the grant of supplies is maintained in the House of Commons of Canada

(1) Whenever an order of the day has been read for the House to resolve itself into the Committee of Supply or the Committee of Ways and Means, the motion "That the Speaker do now leave the Chair" must be proposed, except on Wednesdays, Thursdays and Fridays as provided by Standing Orders 56 and 58. When such motion is proposed, it shall be permissible to



discuss any public matter within the powers of the Federal Parliament or to ask for the redress of any grievance; provided that the discussion shall not relate to any decision of the House during the current session, nor to any item of the estimates, nor to any resolution to be proposed to the Committee of Ways and Means, nor to any matter placed on or whereof notice has been given in the order paper. M. 525; Red. Vol. 3, 136.

The debate in such a case is limited by the rules respecting past decisions, anticipation, sedition, reflections on the Senate or persons in high office, attacks on friendly countries, and any order passed by the House for the purpose of regulating its discussions. The House cannot go into Committee of Supply without question put, on Saturday, if the motion to sit on that day merely provides that the order of precedence shall be the same as on Fridays. (Can. C.J., Vol. 53, p. 666.)

(2) It often happens, on the motion that the Speaker leave the Chair for Committee of Supply, that members air grievances without moving amendments. A member may speak on railway rates, another on naturalization, and so on. Five or six different matters may then be brought to the Government's attention. Once debate is concluded on one matter and another matter intervenes, members cannot again discuss the former. No member is allowed to speak more than once on the motion. He cannot discuss all the matters which may then come up, and when he has spoken on one of them he has exhausted his right to speak to the motion before the House, namely, "That the Speaker do now leave the Chair". Eng. Hans., Vol. 116, p. 3s. 561.

(3) An amendment to a motion for the House to go again in Committee of Supply is not irregular because it is complex in its nature. C.J., Vol. 1, pp. 268, 270.

**235.** The Consolidated Revenue and Audit Act provides (Sec. 2, paragraph (i)), that "public revenue" or "revenue" means and includes and applies to all revenue of the Dominion of Canada, and all branches thereof, including any fees required to be paid under any rule or Standing Order of the Senate or House of Commons" . . . These fees must therefore be paid to the credit of the Receiver-General and they form part of the Consolidated Revenue Fund of Canada. Under the Consolidated Revenue and Audit Act, refunds of public moneys received in respect of proceedings before the Senate or House of Commons, which are authorized by resolution of the Senate or the House

of Commons respectively or by the rules and Standing Orders of either House, shall be notified by the proper officer of Parliament to the Minister and shall be paid by him out of the Consolidated Revenue Fund.

Where a Bill contains, as a subordinate or incidental part of its proposals, the imposition of a charge, it is not required to originate in Committee of the Whole House, but the relevant clause or clauses have to be authorized by a resolution of a Committee of the Whole House before they are considered by the committee on the bill. Any clause or part of a clause, which on examination of the draft Bill is seen to impose a charge, must be printed in italics. M. 15th ed., p. 498.

When burthens are to be imposed on the people, every opportunity must be given for free and frequent discussion, so that Parliament may not, by sudden and hasty votes, incur any expenses, or be induced to approve of measures which may entail heavy and lasting burthens upon the country. B. 404-5.

**236.** If a member wishes to supersede a question, he will move "That the Chairman do now leave the Chair," and if this motion which is not debatable be resolved in the affirmative, the Chairman will at once leave the Chair, and no report being made to the House, the bill or question disappears from the order paper. Two motions to report progress cannot immediately follow one another; but some intermediate proceedings must be had. Consequently if a motion to report progress be negatived, a member may move "that the Chairman do leave the Chair."

**237.** When the resolution or Bill before the Committee of the Whole has been agreed to, the Chairman asks: "Shall I report the resolution?" (or Bill, as the case may be). If nobody answers he takes it for granted that he is ordered to make a report to the House, and he therefore leaves the Chair without question put and reports progress; and, until such report has been made, the House cannot refer to it or to the proceedings of the Committee.

When the Committee of the Whole has reported progress on a Resolution, a motion may be made immediately, no notice being required, before appointing a day for the committee's sitting, that the Resolution be referred to a special committee. (Can. C.J., Vol. 62, p. 151.)

**238.** (1) The estimates for the year are submitted to the Committee of Supply by the Finance Minister bringing them

down in the House with a message from the Governor-General which is read in English and French, the House standing, by the Speaker or by the Clerk at the Table. The Minister then moves "that the said message, together with the estimates, be referred to the Committee of Supply." The estimates are afterwards taken up at any time the Government thinks proper.

There is no time limit under the rules for the Estimates to be brought down, but, as Standing Order 55 provides that the Committees of Supply and Ways and Means shall be appointed at the commencement of every session as soon as the Address has been agreed to, it is good practice to table the Main Estimates shortly after the Address has been disposed of. They have sometimes been brought down during the debate on the Address.

(2) Each grant is a separate motion which must be proposed and discussed as a distinct question, and when it has been formally carried, no reference can be made again thereon. Neither is it regular to discuss any resolution before it has been formally proposed from the Chair.

Sometimes there are a number of items in a resolution. Each item may then, if the committee think proper, be taken up as a distinct question, and so discussed and amended. The debate in such a case must be strictly relevant to the item, and when it has been disposed of, no reference can be again made to it when the subsequent items are under consideration.

(3) Supply resolutions are submitted in the following terms: "Resolved that a sum not exceeding ..... be granted to His Majesty for ..... for the year ending 31st March, 194 ." Each resolution is moved by the Minister for whose department the amount is to be voted.

**239.** The whole management of a Department may be discussed in a general way when the Committee of Supply is considering the first resolution of the Estimates of that Department, which reads as follows: "General Administration" (amount stated); but the discussion must not be extended to any particular item mentioned in the Estimates of that Department. If however the words "General Administration" cover all the expenses to be incurred during the year, as shown for instance, in the Post Office estimates, it is relevant then to criticize every phase of the Department totally or in detail without evading Standing Order 59(2) which sets forth that speeches in committee of the

Whole House must be strictly relevant to the item or clause under consideration.

**240.** Supplementary estimates, when treated as customary and as a matter of course, instead of being restricted to occasion of unforeseen contingencies, do more to destroy effectual parliamentary control than any other indirect method that could be devised. They are, however, for one service or another annually recurring necessities. They may be presented either: (I) for a further grant to a service already sanctioned and voted for, or (II) for a grant for a further occasion of expenditure arising where the estimates were presented: (a) for expenditure newly imposed on the executive by statute; (b) to such an unexpected emergency.

It is extremely difficult to make a close forecast of the amount which will have to be provided.

The introduction of supplementary estimates of any considerable amount is really a breach of contract between the government and Parliament, for when this is done the budget statement is destroyed, and in effect a supplementary budget is set up. Durell.

**241.** (1) The Committees of Supply and Ways and Means, which are committees of the whole House, are appointed, under Standing Order 55, at the commencement of every session as soon as the Address has been agreed to in answer to His Excellency's Speech. The appointment is made by a resolution of the House. After the adoption of that resolution the following orders are placed on the Order Paper: "House in Committee of Supply" and "House in Committee of Ways and Means." When either of these orders is called, the minister moves: "That Mr. Speaker do now leave the Chair". The rules governing debate on that motion are expounded in Standing Orders 56 and 58.

(2) On the motion that the Speaker leave the Chair for committee of Supply, a member, before any amendment has been moved, may speak on a certain subject and spend the last minutes or seconds of his time limit in moving an amendment dealing with another subject, but then he cannot take part in the debate on his own amendment. The same rule applies to the seconder of the amendment. In explaining the purport of their amendment they speak both to the main question and the amendment in one speech.

(3) If it is found inconvenient to go into Committee of Supply or Ways and Means after the motion that the Speaker do leave the Chair has been put and discussed, the motion may be withdrawn with the consent of the House, and the Committee will then be formally fixed for another day. B. 422.

(4) If the order for the House to go into Committee of Supply should become a lapsed order in consequence of a "count out", it will be necessary to revive it by giving notice of a motion for that purpose. B. 422.

**242.** (1) The procedure of the Committee of Supply follows the ordinary usage of a Committee of the whole House. No amendments can be moved which is not relevant to the grant under consideration. The votes should be considered in the order in which they stand on the paper distributed to the Members of the House; but any vote may be passed over and not moved. Once it is moved a motion to postpone it cannot be entertained. Each resolution for a grant forms a distinct motion which can only be dealt with by being agreed to, reduced, negative, superseded or withdrawn. The committee may reduce the amount of a grant by the omission or reduction of the items of expenditure of which the grant is composed. Here the power of the committee ceases.

(2) The only motion allowed, when a resolution is under consideration in Committee of Supply, is that the amount be reduced or that the Chairman leave the Chair (either without making a report or to report progress on certain resolutions). (Can. Deb., 1916, Vol. 3, p. 2772.)

(3) Each resolution can only be dealt with by being agreed to, reduced, negatived, superseded, or, by leave, withdrawn, and the withdrawal can be made although the decision of the committee has been taken upon amendments proposed to the resolution. Here, the power of the committee ceases. M. 531. It is not allowable to attach a condition or an expression of opinion to a vote or to change the destination of a grant. B. 428.

(4) A proposed resolution may be allowed to stand over with general consent until another occasion, but if it has been regularly proposed from the Chair and discussed, no motion for its postponement is regular because there is no period to which it can be postponed. B. 426.

(5) The rule that a member who has used objectionable words must explain or retract the same, or offer an apology, is

as operative in committee as in the House. M. 450. Improper language used by members may be taken down and reported to the House which will deal with it.

(6) When a vote is taken in Committee of the Whole or in Committees of Supply or Ways and Means, the members rise and are counted by the Clerk Assistant who declares the numbers on each side. No names are recorded. The Chairman has a casting vote and in giving it he is governed by the same rules as the Speaker under a similar condition.

(7) Although the Speaker is restrained by usage while he is in the Chair in the exercise of his independent judgment, he is entitled in a Committee of the Whole House to speak and vote like any other member. Of late years, however, he has generally abstained from the exercise of this right. M. 364.

**243.** All Bills providing for the payment of salaries or for any expenditure whatever out of the public funds of the Dominion must be first considered as resolutions in Committee of the Whole. And all such resolutions necessary to the introduction of a Bill must first obtain the recommendation of the Governor-General. It often happens that Bills are introduced with certain clauses providing for salaries or other charges on the public revenue, and in that case the Bill may be introduced directly on motion, while the clauses in question (which should be distinguished by italics or brackets), are considered in the shape of resolutions in committee on the Bill. But this can only be done when the money clauses are merely a part of the Bill. Whenever the main object of a Bill is the payment of public money, it must directly originate in Committee of the Whole. The rule also applies to releasing or compounding any sum of money due to the Crown and to the imposition of any state tax upon the people, but not to pecuniary penalties necessary to the operation of a Bill. B. 502, 503.

A money Bill was defined as follows in the Parliament Act, passed in the British House in 1911:

“A Money Bill means a Public Bill which in the opinion of the Speaker of the House of Commons contains only provisions dealing with all or any of the following subjects, namely, the imposition, repeal, remission, alteration, or regulation of taxation; the imposition for the payment of debt or other financial purposes of charges on the Consolidated Fund, or on money provided by Parliament, or the variation or

repeal of any such charges; supply; the appropriation, receipt, custody, issue or audit of accounts of public money; the raising or guarantee of any loan or the repayment thereof; or subordinate matters incidental to those subjects or any of them."

**244.** (1) When two or more amendments upon the same grant are, at the same time, tendered to the committee, the Chairman puts first the amendment which proposes the largest reduction, and then, if that be not accepted, the lesser amendments; still, as reductions are moved upon a grant independently the one of the other, a succession of reductions may be moved alternating between larger or smaller amounts, as may seem expedient to the movers, subject to the authority of the Chairman who may intervene to determine the most convenient order in taking the amendments offered. M., 534.

(2) Amendments moved for the reduction of a grant are proceeded with under the general rules governing amendments. For instance, on a resolution granting \$10,000 for a certain purpose, a member may move that the amount be reduced by \$2,000. This amendment then takes the form of the original motion offering, in lieu of the sum thereby proposed, a reduced sum for the acceptance of the committee. Rejection of the amendment leaves room for the proposal, without limit, of amendments in the same form and of ever varying amounts. The reduction must be of a substantial and not trifling amount; nor may a series of motions be made upon the same grant, raising, substantially, the same issue.

(3) Amendments proposing, in a Money Resolution, to substitute a loan for a subsidy; to change the destination, purpose and conditions of a subsidy; attaching a condition to a subsidy; affecting the ends and provisions of a subsidy, must be moved by a Minister with the recommendation of the Crown. (Can. C.J., Vol. 58, pp. 763-5.)

**245.** (1) The Chairman of the Committee of the Whole ruled out, on the 7th April, 1933, an amendment to a railway Bill proposing that "any employee of the railway companies affected by this Act, or any employee who loses his employment as a result of co-operation of services between the railways shall be entitled to compensation to be determined by a board of three, one of whom was to be selected by the Minister of Labour, and

that the funds for such compensating board shall be derived by a levy on the gross receipts of the two railways". As one of the railways referred to is the property of the Government, the Chairman did not allow the amendment on the ground that it called for an expenditure of money. Appeal was taken and the House confirmed the ruling. (Can. C.J., Vol. 71, p. 391.)

(2) The conduct of any employee of the Government, in so far as his behaviour outside of office hours is concerned, cannot be inquired into by a member of this House, unless that employee is alleged to have done or published something prejudicial to the public interest. If that be the case, it is competent for the House to get all the details." (Can. Deb., May 20, 1918, p. 2279.)

"As leader of the House of Commons, it is part of my duty to see that members of the public service, who are not in a position to speak for themselves during the course of debates which take place in this House, should be protected against any remarks in the nature of a reflection upon themselves, or references to their personal history such as the honourable member, I gather, was about to make. It must be obvious that members of the public service have to look to the Administration for protection in the discharge of their duties; and if deputy ministers or leading public officials or any members of the public service are to be attacked here, in justice to them they should have the right to make reply on their own behalf from wherever they may happen to be. If that method were to be adopted with regard to the conduct of our public affairs I am afraid the public service of the country could not be carried on in the manner in which the country has a right to expect it will be carried on. (Rt. Hon. W. L. Mackenzie King, H.C. Deb., March 14, 1939, Vol. 2, p. 1862.)

(3) Regarding the general conduct of debate in the Committee of Supply, it may be observed that remarks on the conduct of a servant of the state, made on the grant containing his salary, must be restricted to his official conduct. 329 H.D., 3s. 1431-1434; 3 ib. 1213.

**246.** (1) The recommendation of the Crown is needed for such measures as Bills relating to the extension of time for the repayment of the deposit which has become liable to forfeiture in the case of a Private Bill; the release or compounding of sums



due to the Crown; the repeal of an exemption from an existing duty, as the burthen of the duty is thereby augmented; a proposal to repeal an existing drawback on export of sugar, as it effects an increase of charge upon the importers who desired to export sugar.

(2) The Governor-General's recommendation to any resolution involving a payment out of the public treasury must be formally given by a privy councillor in his place at the very initiation of a proceeding, i.e., as soon as the motion has been proposed for the House to go into committee on the resolution. The words used by a Minister in making the announcement are: His Excellency the Governor-General, having been informed of the subject-matter of this motion, recommends it to the consideration of the House.

(3) The guiding principle in determining the effect of an amendment upon the financial initiative of the Crown is that the communication, to which the royal demand of recommendation is attached, must be treated as laying down *once for all* (unless withdrawn and replaced) not only the amount of a charge, but also its objects, purposes, conditions and qualifications. In relation to the standard thereby fixed, an amendment infringes the financial initiative of the Crown, not only if it increases the amount, but also if it extends the objects and purposes, or relaxes the conditions and qualifications expressed in the communication by which the Crown has demanded or recommended a charge. And this standard is binding not only on private members but also on Ministers whose only advantage is that, as advisors of the Crown, they can present new or supplementary estimates or secure the royal recommendation to new or supplementary resolutions. M. 15, pp. 678-9.

**247.** *Procedure on Money Bills is as follows:*

The resolution having been approved by the Government is initialled by the Prime Minister and transmitted by the Clerk of the Privy Council to the Clerk of the House who has it placed in an appendix of the Votes and Proceedings where it stands as a notice for forty-eight hours prior to insertion on the order paper. Then the resolution and the Bill pass through the following stages:

## FIRST DAY

1. Notice on order paper.
2. Minister moves that House go into committee next sitting to consider said resolution "which has been recommended to the House by His Excellency."

## SECOND DAY

(Not necessarily the next calendar day)

3. Motion under Government Orders on order paper.
4. Minister moves that Speaker leave the Chair for House to go into Committee of the Whole on the resolution.  
(No debate, S.O. 53.)
5. Speaker leaves Chair.  
Committee sits.
6. Chairman of Committee reports as follows: Mr. Speaker, the Committee of the Whole have agreed to a certain resolution and instructed me to report the same.
7. Speaker says: "Mr. .... of the Committee of ..... reports that they have agreed to a certain resolution and instructed him to report the same. When shall the report be received?" "Now?" "Now."
8. Speaker: "Moved by (Minister in charge of resolution), seconded by (his desk-mate) that said Resolution be now read a second time and concurred in." (No debate, S.O. 62.)  
"Is it the pleasure of the House to adopt the motion?"  
"Carried."
9. Speaker: "Mr. .... moves, seconded by Mr. .... for leave to introduce a Bill based on said Resolution. Is it the pleasure of the House to adopt the motion?" "Carried." (No debate, S.O. 71(2).)
10. Speaker: "Mr. .... moves, seconded by Mr. .... that said Bill be now read a first time. Is it the pleasure of the House to adopt the motion?" "Carried." (No debate.)
11. Speaker: "When shall this Bill be read a second time?"  
"Next sitting of the House."

## THIRD DAY

(Not necessarily the next calendar day.)

(Second Reading of Bill)

12. Speaker: "Mr. .... moves, seconded by Mr. .... that Bill No. xx, intituled: An Act to ..... be now read a second time."  
"Is it the pleasure of the House to adopt the motion?"  
(Debate.)
13. Speaker (when the House divides): (Reads the motion):  
"It is the pleasure of the House to adopt the motion?"  
(If the House shows a desire to divide): "All those in favour of the motion, please say 'Aye', contrary 'Nay', (a pause), "In my opinion the 'Ayes' (or 'Nays') have it."  
(If 5 members rise): "Call in the members."
14. Speaker: (The Sergeant-at-Arms having entered and bowed), reads the motion—  
"All those in favour of the motion, please rise."  
(After yeas have voted):  
"All those against the motion, please rise."
15. (Clerk gives results.)  
Speaker: "I declare the motion carried (or) lost."
16. Speaker: "Moved by Mr. ...., seconded by Mr. .... that I do now leave the Chair for said Bill to be considered in Committee of the Whole."  
"Carried." (No. debate, S.O. 53.)
17. (If Bill is to be referred to a Standing or Special Committee)—  
Speaker: "Moved by Mr. ...., seconded by Mr. .... that said Bill be referred to the Select Standing Committee on ..... (or) to a Special Committee." (No debate, S.O. 32(2).)
18. (When Bill is reported from Committee of the Whole):  
Speaker: (After hearing Chairman's Report)—  
"Mr. .... of the Committee of the Whole reports that they have considered a certain Bill and

instructed him to report the same with (or without) amendment. When shall the report be received?" "Now?" "Now."

19. (If reported with amendments):  
Clerk Assistant: "First reading of these Amendments."
20. Speaker: "Moved by Mr. ...., seconded by Mr. .... that said amendments be now read a second time and concurred in." (No debate, S.O. 32(2).) "Carried."
21. When Bill is reported from Standing or Special Committee, motion for concurrence is debatable. (S.O. 32(b).)
22. Speaker: "When shall this Bill be read a third time?" (If Bill to be read third time now):  
"Moved by Mr. ...., seconded by Mr. .... that said Bill be now read a third time." (Debate, S.O. 32(c).)
23. Speaker: "Moved by Mr. ...., seconded by Mr. .... that said Bill do now pass and that the title be as on the Order Paper." "Carried." (No debate, S.O. 32(2).)  
(If title is to be changed):  
"Moved by Mr. ...., seconded by Mr. .... that said Bill do now pass and that title be (read title on the motion, or on the Bill)."

**248.** Our Committee of Supply consists of 264 members who can hardly be expected to consider effectively the details of finance. It cannot examine witnesses; it has no other information than the list of Estimates, the answers of a minister to questions addressed to him in debate and such casual facts as some private members may be in a position to impart. A body so large and so ill-equipped for inquiry would be a very imperfect instrument for the control of expenditure even if the discussions were devoted entirely to that end. But these discussions afford the only opportunity in the course of the year for the debate of grievances and of many questions of policy. The United Kingdom House seems however to have realized that that practice was not in consonance with the conditions of the day, and it has found a way to make a change without infringing any of the

fundamental principles of parliamentary law. They have got around the difficulty by adopting the following course: the Estimates when tabled are referred in the usual manner to the Committee of Supply and they stay there, but a Committee on Estimates is immediately appointed on a special motion which reads as follows:

That a Select Committee be appointed to examine such of the Estimates presented to this House as may seem fit to the Committee, and to suggest the form in which the Estimates shall be presented for examination, and to report what, if any, economies consistent with the policy implied in those Estimates: To consist of twenty-eight members; that seven members be the quorum; with power to send for persons, papers and records, to sit notwithstanding any adjournment of the House and to report from time to time; also with power to appoint sub-committees and to refer to such sub-committees any of the matters referred to the Committee; four to be the quorum of every such sub-committee and every such sub-committee to have power to send for persons, papers and records and to sit notwithstanding any adjournment of the House; and to adjourn from place to place; with power to report from time to time Minutes of Evidence taken before sub-committees.

Under this motion, Estimates are not referred to the Committee on Estimates, which could not be done unless they had been previously withdrawn from the Committee of Supply. Estimates cannot be in two places at the same time. This Committee on Estimates is ordered to examine the Estimates and to suggest economies. It is not called upon to pass the Estimates, which is the function of the Committee of Supply. Its duty consists in looking into any of the Estimates as may seem fit to the Committee and suggest retrenchments or any change in the method of preparing supply. There is nothing against parliamentary principles in the existence of this Committee which can consider the details of expenditure whilst the Committee of Supply criticises administrative policy. Financial resolutions serve only to provide the Committee of Supply with opportunity for criticism and it never happens that any material change is made in the amounts submitted as a result of the discussion. The passage of supply is always a foregone conclusion. We might as well admit that so far as debate is con-

cerned the detailed examination of the Estimates is almost a fiction. The proper place for a careful inspection of the yearly expenditure is a Select Committee and it seems that the device resorted to in the United Kingdom House has great merit and should be given the most serious consideration.

The Public Accounts Committee designed in the United Kingdom House, to guarantee financial regularity and audit, exercises great influence over the departments; yet it possesses no direct power other than the power to call for documents and to require witnesses to attend. Its power is indirect and lies nominally in the potential results of its reports. Actually its power lies in the publicity which it is able to give to the questions it investigates, and in the moral effect on departments of its criticism. Durell.

The following excerpts from the report of the Select Committee on Estimates in the United Kingdom House is a good illustration of the work performed by the Committee:—

Your Committee have examined the provisions made in the Estimates for expenditure on Research and Development by the various Departments concerned. They heard witnesses for the Ministries of Defence and Supply; from the Admiralty, the War Office and the Air Ministry; from the Colonial Office, the Ministry of Agriculture and Fisheries, the Scottish Home Department, and the Department of Agriculture for Scotland; from the Board of Trade; from the Department of Scientific and Industrial Research and the Medical and Agricultural Research Councils; and from the University Grants Committee. A visit was paid to the Research Station of the Post Office Engineering Department at Dollis Hill, where witnesses from the General Post Office were heard. Memoranda were received from the Ministries of Health and Transport, but it was not thought necessary to take oral evidence from these two Ministries.

Here is a sample of the kind of recommendations made by the Committee:—

In the course of their inquiry Your Committee have reviewed the estimated expenditure on a wide and varied range of scientific research. It is not their function, nor are they equipped for such a purpose, to consider the highly technical problems involved in the detailed planning and conduct of this work. But they are concerned to inquire—whether in

drawing up this programme the Government have provided themselves with the best scientific advice available in this country and have secured that this advice can be brought to bear on the formulation and execution of Government policy; whether the administrative organization has been so planned as to establish the right relationship between the scientist and the Executive and to secure the most fruitful results from the money spent; and, above all, whether the scope and balance of the programme is such as will direct the application of scientific knowledge and effort into those fields where it is most likely to yield returns of permanent value to the nation and in such a way as will make the most efficient use of the limited resources of both money and manpower. For this latter purpose, machinery must be devised to ensure that the benefits accruing from the increasing Government expenditure on research are made widely available.

What will happen to the committee report after it has been laid on the Table of the House? It has been suggested that a certain time be allotted for its discussion. Shall we run into the danger of prolonging the session if two debates are allowed on the Estimates: one in Committee of Supply and the other on the report of the Committee on Estimates? We shall not if the number of days allotted to the Committee of Supply is limited. In the United Kingdom there is a Standing Order (No. 14) which provides that twenty days and no more be allotted for the consideration of the Navy, Army, Air and Civil Estimates, including any day on which the question has to be put that Mr. Speaker do leave the Chair. A committee on procedure recommended in January, 1947, that provision be made for securing discussion of the reports of the Committee on Estimates by giving them precedence on not more than two of the days allotted to Supply. (In Canada, the average time spent in discussing supply during a five-month session is twenty days.) Full discussion of the country's expenditures is the paramount function of the House of Commons and nothing, not even the desire to save time, should be allowed to impair it. No session is too long when no time is wasted. But experience has proven in the case of the Estimates for Railways and Shipping that select committees' reports on estimates are generally accepted without discussion. A full explanation of the Supply Resolutions having

been given in the committee, members are satisfied to let them pass in the House.

**249.** (1) "No cases can be found of any private member in the Canadian Commons receiving the authority of the Crown, through a minister, to propose a motion involving the expenditure of public money. No principle is better understood than the constitutional obligation that rests upon the executive government, of alone initiating measures imposing charges upon the public exchequer. On one occasion, in the English Commons, the consent of the Crown was given to certain formal resolutions proposed by a private member with reference to charges in courts of law to be defrayed out of the consolidated fund. It was thought, however, that any resolution placing a charge on the consolidated fund should be moved by a minister of the Crown, and the more regular procedure was thereupon carried out. It was distinctly affirmed, however, that the member who proposed the motion involving the charge was within his right when he had the sanction of the Crown, but it was generally admitted at the same time that it was better, as a matter of policy, that the proposition should emanate from a responsible adviser of the sovereign." B. 407.

"The responsibility of recommending applications for pecuniary redress or relief to the consideration of Parliament should rest solely upon the executive government, who are strictly accountable for every item of public expenditure, whose especial duty it is, in the interest of the taxpayer, to oppose all unnecessary outlay, and who possess peculiar facilities for investigating into the merits of all pecuniary claims." T., Vol. I, 699.

(2) A motion requesting the Government to introduce *immediately* legislation granting retirement allowances to all citizens over sixty years of age is out of order because it involves an expenditure of money. (An appeal was taken from this decision and the Chair was sustained): C.J., Vol. 74, p. 52.

(3) An amendment declaring that Government action in any matter should be taken forthwith and giving a direct order which, if approved by the House, would compel the Government to adopt measures involving an expenditure of public money, could not be moved by a private member. Cr. J., Vol. 83, pp. 220-1.



**250.** (1) It seems that under Section 11 of The British North America Act the Governor-General cannot officially take advice in regard to public affairs from other persons than his sworn privy councillors. The Section says:

"There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council of Canada; and the persons who are to be members of that Council shall be from time to time chosen and summoned by the Governor-General and sworn in as Privy Councillors, and members thereof may be from time to time removed by the Governor-General."

The wording of this section makes it compulsory for the Governor-General to consult his ministers, or at any rate privy councillors, before recommending to the House an expenditure sought by a private member. His Excellency, by giving his recommendation at the request of a private member, without or in spite of his cabinet's consent, would show lack of confidence in the Prime Minister.

"If any motion, or Bill, or proceeding is offered to be moved, whether in the House or in a committee, which requires, but fails to receive, the recommendation of the Crown, it is the duty of the Chair to announce that no question can be proposed upon the motion, or to direct the withdrawal of the Bill. In like manner, after the question has been proposed on an amendment, and it has appeared that the amendment would vary the incidence of taxation or increase the charge upon the Consolidated Fund, the Speaker has declined to put the question." M. 505.

(2) If His Excellency is debarred from taking the advice of individuals on public matters, he is not precluded from acting upon any request made to him by the House of Commons. The House is always free to approach the Crown with its constitutional advice in any matter of prerogative, but in requesting the Crown to incur certain expenditure, it must give assurance of its readiness to make good the same. An abstract resolution does not finally bind the House to make the grant, and it imposes upon the Government the responsibility of either accepting or rejecting the recommendation. Addresses to the Crown requesting an issue of public money must originate in a Committee of the Whole House. (See T., Vol. I, Ch. 16.)

(3) The object of the resolution recommended by the Crown is to give the House a first opportunity to discuss the advisability of making a certain expenditure. The details of the projected measure are not then disclosed and debate is confined to the resolution which should not be lengthy, although care must be taken that the terms used are sufficiently wide to cover the whole of the Bill which will be subsequently introduced. No amendment affecting the purposes for which the grant is recommended by the Crown can be allowed. The constitutional principle which vests in the Crown the sole responsibility of incurring national expenditure forbids an increase by the Commons of a sum demanded on behalf of the Crown for the service of the state. This principle, however, is apparently disregarded when the recommendation of the Crown is given to a resolution empowering the expenditure of public money which, framed in general terms, places no limitation on the amount of expenditure to be authorized by the resolution. M. 510.

(4) The fundamental terms of a money resolution submitted to the House with the Governor-General's recommendation upon which a Committee of the Whole is set up cannot be amended. Amendments will only be in order if they fall within the terms of the resolution. The procedure in committee on those resolutions follows in principle the procedure of the Committee of Supply, and amendments are out of order if they are proposed with a view to substituting an alternative scheme to that proposed with the royal recommendation. (Can. C.J., Vol. 74, p. 398.)

(5) An amendment merely asserting as an abstract principle the expediency of a larger expenditure than that recommended by the Crown in resolutions can be proposed, such amendment being moved mainly to prevent concurrence in the resolutions and having no practical effect with regard to public moneys unless the said increased expenditure is recommended by a new Message from the Crown. (Can. C.J., Vol. 2, pp. 235-237.)

**251.** (1) It may happen that the resolution sanctions some expenditure without fixing the maximum amount to be spent. If, for instance, the resolution recommends that adequate salaries be paid a newly constituted body and the amounts of the salaries are fixed in the Bill based on that resolution, the Committee *on the Bill* has the right to increase those amounts, because, in

doing so, it does not go beyond the scope of the royal recommendation.

(2) A motion that certain commissioners should be appointed to examine the feasibility of some public improvements and report the results of their investigations to the House is in order, as it is an abstract proposition that does not necessarily bind the House in any way. (Can. C.J., Vol. 8, p. 214.)

(3) It is out of order to move for the adoption of a general resolution with respect to any particular item, or for the reference of a particular vote to a select committee. *Mirror of Parl.* 1831, p. 1826; *do.*, 1831-2, p. 3472.

(4) Private members may introduce resolutions that do not directly involve the expenditure of public money and have no operative effect but simply express an abstract opinion on a matter which may necessitate a future grant. (Can. C.J., Vol. 58, p. 100.)

**252.** During the Debate on a Resolution to raise by way of loan under the Consolidated Revenue and Audit Act, 1931, an amount not to exceed \$750,000,000 for paying and redeeming certain loans and purchasing unmatured securities a member moved in amendment that part of the loan be raised by the issue of currency by the Government of Canada. The Chairman ruled the amendment out of order on the ground that it was proposed with a view to substituting an alternative scheme to that proposed with the Governor-General's recommendation. An appeal was taken to the House which confirmed the Chairman's ruling by a vote of 85 to 16. (Can. C.J., Vol. 77, pp. 325-6.)

**253.** As the Canadian National Railway Company is the property of the Dominion of Canada, any motion made in the House for an expenditure payable by that Company is out of order as it involves a charge on the Treasury and it can only be sponsored by a Minister on the recommendation of the Crown. On the 9th May 1933, the House was considering the third reading of a Bill to provide for the co-operation of the C.N.R. and C.P.R., and a member moved to send the Bill back to Committee of the Whole with instruction to add as a new clause that both railways shall provide compensation to the employees whose services would be dispensed with as a result of the operation of any of the provisions of the Act. The Speaker ruled the proposed amendment out of order as one

involving the expenditure of public money. On an appeal the House sustained the Speaker's decision by a vote of 74 to 32. (Can. C.J., Vol. 71, p. 534.)

**254.** An Act to amend the Dominion Lands Act so as to provide that an entrant may abandon one lot of land to the Government and take up another in lieu thereof, his cash payment remaining to his credit, does not involve any public aid or charge upon the revenues and may be introduced without reference to a Committee of the Whole House. (Can. C.J., Vol. 45, p. 150.)

**255.** An amendment agreed to in Committee of the Whole on a Bill was ruled out of order by the Speaker, on his own initiative, when the order was called for receiving the committee's report, because it contemplated a larger expenditure than was provided for in the original resolution which had been recommended by the Governor-General prior to the introduction of the Bill. (Can. C.J., Vol. 49, p. 505.)

**256.** (1) A resolution, imposing on the Dominion Government the obligation to carry out a compact not fulfilled by the Government of the late Province of Canada whereunder settlers were to receive moneys derived from Crown lands, was ruled out because it did not originate in committee and was not recommended by the Governor-General. (Can. C.J., Vol. 3, pp. 143-5.)

(2) A resolution that the Government relinquish certain specified claims cannot be considered on a private member's motion but must be taken up in Committee of the Whole upon the Governor-General's recommendation. (Can. C.J., Vol. 60, pp. 69-71.)

(3) A motion to assign entirely to the Dominion the debt of the former Province of Canada was ruled out because it created a burthen on the people and it had not been recommended by a Message from His Excellency the Governor-General. (Can. C.J., Vol. 4, pp. 49-50.)

**257.** On the 20th February 1936, a member moved that the Government be requested to "immediately" introduce legislation granting adequate retiring allowance to all citizens over sixty years of age. The Speaker ruled the amendment out of order on the ground that it involved the expenditure of public

money and the decision was sustained on an appeal to the House with a vote of 158 to 2. (Can. C.J., Vol. 74, p. 52.)

**258.** In Committee of Supply, on the 22nd May, 1931, while a resolution was in discussion for an expenditure of \$6,000,000.00 for construction and betterments of Hudson Bay Railway and Terminals, a member was ruled out of order by the Chairman for discussing the question of railway branches to the Pacific Coast by a Peace River outlet. The Chairman based his ruling on Standing Order 58, Section 2, which says that "speeches in Committee of the Whole must be strictly relevant to the item or clause under consideration". An appeal was taken to the House but the ruling was confirmed on division. (Can. C.J., Vol. 59, pp. 232-3.)

**259.** On the 30th March, 1933, when the Committee of Supply was considering the estimates of the Department of Justice, a member endeavoured to discuss the findings of a Royal Commission appointed to investigate charges against a County Court Judge. The Chairman ruled that the report not having been brought down, the matter was still sub-judice and the discussion could not take place. On an appeal to the House, the Chairman's ruling was confirmed without a dissenting voice. (Can. C.J., Vol. 71, p. 360.)

**260.** (1) The tendency has been in the Canadian House of Commons, for the past twenty-five years, to rule out all motions purporting to give the Government a direct order to do a thing which cannot be done without the expenditure of money. Our Journals are full of precedents to this effect.

(2) The consent of the Governor-General is required for the adoption of a Bill granting to the Government power to release liens held and liabilities due or to become due by virtue of the enactment. (Can. C.J., Vol. 52, p. 207.)

(3) A motion to refer to a Select Committee a Return to an Address respecting a claim for damages against the Government is in order, but the House could not concur in a report from the committee recommending payment, without the previous recommendation of the Crown. (Can. C.J., Vol. 4, p. 254.)

(4) It is not out of order to discuss transportation problems generally when such matters have been referred to a royal commission. On the other hand, reference should not be made to

the proceedings or evidence or findings of a royal commission before it has made its report. C.J., Vol. 52, p. 134.

**261.** When it has been proposed to omit or reduce items in a resolution, the question shall be afterwards put upon the original resolution, or upon the reduced resolution, as the case may be, without amendment. And after a question has been proposed from the Chair for a reduction of the whole resolution, no motion shall be made for omitting or reducing any item. B. 426.

**262.** If a resolution is amended in the Committees of the Whole, Supply or Ways and Means, the Chairman does not report it "with amendments", because it had not been discussed in the House, when the Speaker was in the Chair, prior to being referred to the committee. The resolution is not considered by the House in the same way as a Bill which, under Standing Order 77, is read twice before committal. The terms of the resolution are submitted for the consideration of the House for the first time when the resolution is reported from committee. As the House up to that moment has not considered the merits of the resolution, the committee's amendments do not change anything that has been done by the House and, no matter how much the resolution has been altered by the committee, it is reported with all its alterations but without the mention of amendments.

**263.** (1) All taxes, duties and grants of money, and all measures imposing financial burdens on the people are matters within the sole jurisdiction of the House of Commons. Closely connected with the first of the Commons' rights in money matters, is a second, inseparable from it and equally fundamental. They are entitled to order and dispose how the national revenue, whether permanent or annually granted, is to be spent, and to do so in the greatest detail. Red. III, pp. 119-120.

(2) "The principle that the sanction of the Crown must be given to every grant of money drawn from the public revenue, applies equally to the taxation levied to provide that revenue. No motion can therefore be made to impose a tax, save by a Minister of the Crown, unless such tax be in substitution, by way of equivalent, for taxation at that moment submitted to the consideration of Parliament; nor can the amount of a tax proposed on behalf of the Crown be augmented, nor any altera-

tion made in the area of imposition. In like manner, no increase can be considered either of an existing, or of a new or temporary tax for the service of the year, except on the initiative of a minister, acting on behalf of the Crown; nor can a member other than a minister move for the introduction of a Bill framed to effect a reduction of duties, which would incidentally effect the increase of an existing duty, or the imposition of a new tax, although the aggregate amount of imposition would be diminished by the provisions of the Bill." M. 511.

(3) The 54th Clause of the British North America Act, 1867, merely relates to appropriations, and does not bear on the question of the imposition of taxes. (Can. C.J., 1878, Vol. 12, pp. 200-1.)

**264.** The Committee of Ways and Means meets upon a resolution that the House will at a specified time resolve itself into a committee to consider the Ways and Means for raising the supply to be granted to His Majesty. It provides the public income raised by the imposition of taxation, and votes the resolutions which authorize the issue out of the consolidated funds of the sums required to meet the grants voted by the Committee of Supply.

**265.** (1) No member other than a minister of the Crown may introduce a Bill for the reduction of duties. The Government must take full responsibility for the taxation levied to provide the revenue. But the House enjoys complete freedom to make every representation possible to the Government with regard to the manner in which the ministers discharge this responsibility. This duty the members may perform by moving amendments to reduce the taxes proposed by the Administration.

(2) A Bill to authorize the assessment of the salaries or incomes of certain persons in the service of Canada ruled out of order, because it did not emanate from the Government, and had not originated in Committee of the Whole. (Can. C.J., Vol. 23, p. 110.)

**266.** (1) A ways and means resolution is a necessary preliminary to the imposition of a new tax, the continuation of an expiring tax, an increase in the rate of an existing tax, or an extension of the incidence of a tax so as to include persons not already payers. According to present practice it is im-

material whether the tax is solely intended to provide revenue for the service of the year, or whether its primary purpose is to regulate imports.

(2) When a Resolution to impose a tax is in Committee of Ways and Means, an amendment to the effect that certain taxpayers be paid a rebate on a tax and that in lieu thereof the general tax be increased is out of order on the ground that it involves an increase of taxation which should be moved by a minister of the Crown. H. of C. Can. Deb., May 22, 1941.

(3) A Committee is not empowered to recommend a reduction of public revenue when it has not received a special reference instructing it to look into an expenditure. C.J., Vol. 61, p. 620.

(4) It is not in order to move the deletion of a particular clause in an Excise Tax Resolution because it alters the balance of Ways and Means. Chairman's decision confirmed by the House on a division. 112 yeas, 46 nays, May 3rd, 1951.

**267.** The consideration of the financial statement of the year, familiarly known as "the budget" is made when the Finance Minister has completed his estimates of the probable income and expenditure for the year and usually after some progress has been made in voting the main estimates laid on the Table. It is usual to make the budget speech on the motion for the House to go into Committee of Ways and Means; but Finance Ministers have at times found it convenient to make it on the motion for Committee of Supply.

**268.** (1) Though it is the function of the Committee of Ways and Means to impose rather than to repeal taxes, example of the repeal of taxation effected in this committee are to be found upon the journals. Proposals for the variation or modification of taxation can therefore be made in the committee; but these proposals must be grafted upon the financial scheme submitted by the Government, and must not affect the balance of ways and means voted for the service of the year. Amendments, therefore, can be proposed to substitute another tax, of equivalent amount, for that proposed by the Government, as an alternative duty, the necessity of new taxation, to that extent, being already declared on behalf of the Crown. M. 543-4.

(2) An amendment proposing to substitute probate and legacy duty on real property, as an alternative for inhabited house duty imposed by resolution has been admitted. C.J.



(1852-53) 187;; Parl. Deb. (1852-53), 123, 157. See also similar proposal to substitute a duty on soap for a duty on newspapers. C.J. (1836), 524; and see also Denison, 89. According to modern practice such an amendment is out of order. Even if the exact equivalence in the amount of the yield could be guaranteed (which is manifestly impossible), the objective that the incidence of the tax proposed would be extended to persons previously exempt would be fatal to such an amendment. M. 15th ed., p. 769.

**269.** No augmentation of a tax or duty asked by the Crown can be proposed to the committee, nor tax imposed, save upon the motion of a Minister of the Crown; nor would an amendment to extend the imposition of a tax to persons enjoying an exemption therefrom be now permitted. M. 544.

**270.** (1) A private member may move that certain specified taxes be readjusted and that the scope of tax exemptions be enlarged. (Can. C.J., Vol. LXI, pp. 186-188.) It is in order to move an abstract proposition respecting the revision of the tariff. C.J., Vol. 10, p. 69.

(2) An amendment to enlarge a class of articles on which duties are levied cannot be moved to the Tariff Act by a private member. (Can. C.J., Vol. 66, p. 425.)

(3) Motion for the imposition of an import duty ruled out, because such proposition should emanate from the Government. (Can. C.J., Vol. 2, p. 242.)

(4) A motion that all rural telephone companies should be exempt from federal income tax is out of order as it involves a reduction of revenue and is therefore a charge on the public treasury. (Can. C.J., Vol. 74, p. 90.)

**271.** When all the supplies for the service of the year have been granted, the sittings of the Committee of Supply are discontinued. Care must be taken not to close the committee until all the necessary grants have been obtained. If the Committee of Supply be designedly closed, it cannot be reopened save by the demand from the Crown for further supplies made by a special speech from the throne, or a royal message or by the communication of additional estimates. M. 538.

**272.** Amendments to the second reading of resolutions reported from the Committee of Ways and Means must be

relevant to the matter contained in the said resolutions. (Can. C.J., Vol. 53, pp. 239-40.)

**273.** When a schedule of duties has been reported from a committee, and agreed to by the House, the committee on the Bill cannot increase such duties or add any articles not previously voted; but if the duties so voted are less than those payable under the existing law, it is competent for the Committee on the Bill to increase them provided such increases be not in excess of the existing duties. M. 511-12.

When it appeared from the debate that an amendment proposed to a resolution reported from the Committee of Ways and Means would increase the charge, the Speaker ruled the amendment out of order. 171 C.J. 108.

**274.** Resolutions of the Committees of Supply and Ways and Means, and other Committees of the whole House authorizing the expenditure of public money or imposing taxation, are not considered on the day on which they are reported from the committee but on a future day appointed by the House. A relaxation of this rule is permitted in case of extraordinary urgency but not to facilitate the ordinary transaction of public business.

**275.** The Committees of Supply and Ways and Means are kept alive by an order that they shall meet again at the next sitting of the House. Should they report and not receive this permission, they would cease to exist and the House would have to set them up again. They consist of the Whole House and are only a committee in the artificial sense of the word. They are appointed by merely naming a date for the House to resolve itself into committee. On that date, a motion is made for the Speaker to leave the Chair.

When the Committee of Supply rises without reporting, it is not thereby designedly closed and it may be revived by a motion without notice; but if the committee has been designedly closed, it must be constituted again in pursuance of new Estimates being brought down by the Government. (Can. C.J., Vol. 63, p. 165.)

**276.** (1) In early editions of this book (Sir T. Erskine May's *Parliamentary Practice*), it was stated that "the Crown has no concern in the distribution of taxes." Hence amend-

ments were at first permitted which proposed the substitution of a different tax for a tax proposed by the Government (provided that both were estimated to yield an equivalent amount) on the ground that the necessity of next taxation to that extent had already been declared on behalf of the Crown. In modern practice this view is regarded as incomplete, and so requiring to be supplemented by the view that the royal initiation in taxation implies the exclusive right to define the *incidence* as well as the *amount* of burdens to be placed upon the people, and that an amendment which transfers a burden to taxpayers not previously liable is an infringement on this initiative. M. 15, p. 682.

(2) The motion by which a tax is proposed in Committee of Ways and Means is now treated as an effective expression of the financial initiative of the Crown, and therefore as the standard in relation to which the admissibility of amendments is determined. Accordingly an amendment is debarred, not only from increasing the rate of a tax, but also from extending its incidence to new classes, even while proposing to relieve other classes of payers. M., 14th ed., p. 683.

(3) When resolutions of the Committees of Ways and Means are agreed to, Bills of which the most important is the appropriation or supply Bill are ordered thereon, to carry the resolutions into effect. When the resolutions amending the tariff or imposing any charges upon the people have been agreed to, they are embodied in Bills which pass through the same stages as other Bills. M. 550.

(4) The House can make amendments which diminish the amount of reduction of taxation, or postpone the day when the reduction takes place, although the amendments may increase to that extent the charges proposed to be levied upon the people. M. 512.

So long as an existing tax is not increased, any modification of the proposed reduction may be introduced in the committee on the Bill, and is regarded as a question not for increasing the charge upon the people but for determining to what extent such charge shall be reduced. M. 512.

(5) Debate and amendment on the stages of the Finance Bill or other Bills imposing taxes are governed by the ordinary rules of relevancy and, if any of the provisions of the Bill should be found to go beyond the resolutions of the Committee of Ways and Means or other committee of the whole House, as

agreed to by the House on report upon which the Bill is founded, a further resolution must be passed by the Committee of Ways and Means or other committee of the whole House, and agreed to by the House before those provisions are considered in Committee on the Bill, or the Bill must be amended so as to conform to the resolutions to which the House has agreed. Amendments to the Bill which are not covered by resolutions of the Committee of Ways and Means or other committee of the whole House are out of order. Amendments have also been ruled out of order as not relating to the finance of the year. (M. 550.)

(6) On the third reading of a Bill to authorize the levying of a tax, a private member cannot move in amendment, even with the approval of the Government, that the Bill be referred back to the Committee of the Whole with the object of having the tax increased. (Can. C.J., Vol. 53, p. 567.)

**277.** (1) "If the charge created by the Bill is a subsidiary feature, resulting from the provisions it contains, the royal recommendation and preliminary committee are not needed before the introduction of the Bill, but before the clauses and provisions creating such charges can be considered by a Committee on the Bill, a resolution sanctioning them must be passed by a Committee of the Whole House appointed upon the recommendation of the Crown, and must be agreed to by the House." (M., pp. 506-7.)

(2) A Bill, which does not involve a direct expenditure but merely confers upon the Government a power for the exercise of which public money will have to be voted by Parliament, is not a money Bill and no resolution is necessary as a condition precedent to its introduction. (Can. C.J., Vol. 47, p. 240.)

(3) A Bill designed to furnish machinery for the expenditure of a certain sum of public money to be voted subsequently by Parliament may be introduced in the House without the recommendation of the Crown and without a resolution being first considered in committee. (Can. C.J., Vol. 47, pp. 118-19.)

(4) A Bill providing that certain notes held by an Insurance Company will be deemed to be promissory notes within the meaning of a certain statute, by the affixture of a double stamp, does not involve an appropriation of money and may be introduced by a private member. (Can. C.J., Vol. 4, pp. 112, 113.)

**278.** (1) On a motion for the second reading of a Bill to amend the Act respecting the Departments of Customs and Inland Revenue, objection was taken to a provision increasing the salary of the Commissioner of Customs, on the ground that, as it would make a charge on the revenue, the Bill ought to have originated in Committee of the Whole; Mr. Speaker decided that the point was well taken and the Bill could not proceed. (Can. Deb., March 26th, 1896.)

(2) On the 27th June, 1934, on the motion for the third reading of a Bill to incorporate the Bank of Canada, an amendment that the Bill be referred back to the Committee of the Whole, with instruction that they have power so to amend it as to provide that the Bank of Canada shall be Government owned and controlled, was ruled out of order on the ground that it involved the expenditure of public money. On an appeal to the House, the Speaker's decision was sustained. (Can. C.J., Vol. 72, pp. 548-9.)

(3) Reductions can be made *in Committee on the Bill*, but no grant can be increased except upon recommendation of the Crown.

(4) The committee is not bound by the terms of the provisions which the Ministers have inserted *in the Bill*; and, when no amount has been mentioned in the resolution, any member may propose to increase the grants specified in the Bill or to extend the application of the provisions of the Bill, whatever may be the cost resulting therefrom, so long as the power conferred by the royal recommendation is not exceeded.

**279.** (1) Not only is the introduction of Money Bills reserved to the House of Commons, but details of the expenditures are also under its exclusive authority. As far back as 1692, when the Lords amended a Bill for granting an aid of four shillings in the pound by appointing Lords Commissioners to rate the peers and a collector to receive the impost, the Commons disagreed and gave the following as their reasons: "That the right of granting supplies to the Crown is in the Commons alone, as an essential part of their constitution: and the limitation of all such grants, as to the matter, manner, measure, and time, is only in them: which is so well known to be fundamentally settled in them, that, to give reasons for it, has been esteemed by our ancestors to be a weakening of that right.

And the clause sent down by your Lordships is a manifest invasion thereof." 3 Hatsell, 126.

(2) Neither the New Zealand nor the Canadian laws can be so construed as to warrant a claim by the Upper Chambers of either Parliament to equal rights in matters of aid and supply to those which are enjoyed and exercised by the Commons House of Parliament of the United Kingdom; for such a claim, if insisted upon, would, to a like extent, derogate from and diminish the constitutional rights of the representative Chamber. Todd. II, 705.

(3) The Commons, having during nearly three centuries claimed the right to include the members of the House of Lords in the taxation levied upon the subjects of the Crown advanced this claim still further in 1671 by resolving, "That in all aids given to the king by the Commons, the rate or tax ought not to be altered by the Lords"; and, on the 3rd July, 1678, by a second resolution, "That all aids and supplies, and aids to His Majesty in Parliament, are the sole gift of the Commons; and all Bills for the granting of any such aids and supplies ought to begin with the Commons; and that it is the undoubted and sole right of the Commons to direct, limit, and appoint in such Bills the ends, purposes, considerations, conditions, limitations, and qualifications of such grants, which ought not to be changed or altered by the House of Lords." M. 564.

(4) The Lords may not amend the provisions in Money Bills which they receive from the Commons, so as to alter, whether by increase or reduction, the amount of a rate or charge, its duration, mode of assessment, levy, collection, appropriation or management; or the persons who pay, receive, manage, or control it; or the limits within which it is leviable. Other forms of amendment by the Lords have also been held to infringe the privileges of the Commons, such as the addition of a clause providing that payments into and out of the Consolidated Fund should be made under the same regulations as were applicable by law to other similar payments; of provisions for the payment of salaries to officers of the Court of Chancery out of the suitors' fund; and alterations in a clause prescribing the order in which charges on the revenues of a colony should be paid. M. 564.

Both income and expenditure are completely and exclusively in the hands of the House of Commons. The House of Lords has the alternative of accepting or rejecting the financial pro-

posals of the Commons as a whole but has no power of amending a single detail; its rights at the present time are hardly more than formal. Red. III, 120.

**280.** (1) A Supply Bill should be passed as a matter of course by the Senate in almost any conceivable circumstances if it contains nothing but supply. If other matters are inserted in the Bill or "tacked to it", these should be struck out and be made into a separate Bill or Bills. Memo submitted to the Senate by Hon. W. B. Ross, May 15th, 1918.

(2) There can be no doubt that the difference between the British House of Lords and the Canadian Senate are of substantial character, but, after all, the two Houses occupy the same position. For the members of neither House are elected by the people, and the privilege of the Assembly with regard to Money Bills has always been based upon the fact that the House was composed of popularly elected members. J. S. Ewart.

(3) The Senate may take exception if a message from the Crown for pecuniary aid is sent exclusively to the Commons. The legal right of the Senators, as a co-ordinate branch of the legislature, to withhold their assent from any Bill whatever, to which their concurrence is desired, is unquestionable. They may throw out any Money Bill, and their vote is irrevocable during the session, but they have no right to amend.

(4) Messrs. E. Lafleur, K.C. and Aimé Geoffrion, K.C., in their letter to Senator W. B. Ross, on May 15, 1918, say: "We are of the opinion that the Senate may amend a Money Bill originating in the House of Commons as fully as the House of Commons can do. Of course the powers of the Senate are limited to the same extent as those of the House of Commons by the fact that Money Bills must be recommended by a message of the Governor-General."

But the recommendation being made to the House of Commons and not to the Senate the latter is not bound to take it in consideration when a decision has to be given on a Money Bill.

**281.** (1) If it is found convenient to introduce Bills involving public expenditure in the Senate, in such a case, the money clauses are embodied in the Bill as presented, in order to make it more intelligible. When the Senate goes into committee on the Bill, these clauses are ordered to be left out. They are

printed in red ink or italics in the engrossed Bill sent up to the Commons, and are technically supposed to be blanks. These clauses are always considered in a previous committee by the Commons, and then regularly referred to the Committee of the Whole on the Bill.

(2) When amendments made by one House to a Bill from the other House are received back, and are under consideration, it is not regular to discuss the Bill itself, or its principle, or the policy of the government thereon; but the debate must be confined to the amendments. The question whether the Senate has power to amend a Bill to impose taxation is a point of constitutional law in respect of which the Speaker must not give an official decision; but the House may adopt as its own the amendments made by the Senate and order that a protest be entered in the Journals. (Can. C.J., Vol. 53, 662-3.)

**282.** When a Bill is returned from the Senate with amendments, the amendments are read and agreed to, or agreed to with consequential amendments, or disagreed to, or the further consideration thereof put off for three or six months, or the Bill ordered to be laid aside.

No amendment can be proposed to the Senate's amendment save an amendment strictly relevant thereto; nor can an amendment be moved to the Bill, unless the amendment be relevant to or consequent upon either the acceptance or the rejection of a Senate amendment.

When the House of Commons has disagreed to a Senate amendment, the Senate may return the Bill with further amendments thereto, or with amendments proposed as alternative to the amendments disagreed to by the House.

When the Senate returns the Bill with a message that they insist on an amendment to which the House of Commons has disagreed, the House may either agree, with or without amendment to the amendment to which it had previously disagreed, and make, if necessary, a consequential amendment to the Bill; or may postpone the consideration of the Senate amendment for six months; or discharge the order thereon, and withdraw the Bill; or order the Senate amendments to be laid aside or not proceed at all on the order for consideration of the Senate amendment. See M. 914.



**283.** The consent of the King or Queen, as the case may be, (to be distinguished from the Royal Assent of Bills) is given by a Privy Councillor to Bills (and occasionally amendments) affecting local and personal interests which concern the royal prerogative, the hereditary revenue or personal property or interests of the Crown or Duchy of Cornwall (May, 598). The royal Consent cannot be communicated in committee, is generally given at the third reading, and its omission, when it is required, renders the proceedings on the passage of a Bill null and void. Similarly to the Consent is the form of communication from the Crown "placing its interest at the disposal of Parliament", which is required in the case of Public Bills specially affecting the rights of the Crown, its patronage or prerogative (Todd, ii. 60), and should be given before the committee stage (Church Temporalities (Ireland) Bill, 1833). In 1868 the Queen placed her interest at the disposal of Parliament for the purpose of a Bill in reply to an Address of the House of Commons (M. 600). (Campion, p. 293.)

This consent of the Crown may be given either by a special message, or by verbal statement from a Minister. In the Canadian House, it is generally signified on the motion for the second reading, though cases will be found of its having been given at other stages. B. 413, 414.

The procedure with respect to signifying the "consent" is different from that in giving the recommendation of the Crown. The recommendation precedes every grant of money, the consent may be given at any stage before final passage, and is always necessary in matters involving the rights of the Crown, its patronage, its property or its prerogatives. B. 413.

In any case where a private member wishes to obtain the consent of the Crown, he may ask the House to agree to an Address for leave to proceed thereon before the introduction of the Bill. B. 413, 414.

**284.** When it is required, either by statute or by the terms of a trade agreement, that the agreement be approved by Parliament, the approval must be given by the passage of an Act of Parliament duly adopted in both Houses and assented to by the Governor-General. A mere resolution approving the agreement would only be the expression of the opinion of the House which adopted it. Formerly, no Bill relating to trade was to be brought into the House until the proposition had been first considered in

a Committee of the Whole. This was abolished in the revision of the rules which took place in 1927. Now, if there are tariff changes in a trade agreement, they have to be first considered in Committee of Ways and Means because, as Bourinot says, "it is there that taxes are increased, repealed or otherwise amended." On report from that committee, the Bill approving the Treaty is introduced and read a first time. When the second reading is moved, the whole principle of the agreement may be debated and all amendments allowed at that stage may then be moved. After second reading, the Bill is referred to a Committee of the Whole where the fiscal changes agreed to by the Committee of Ways and Means are subject to amendment. From the Committee of the Whole the Bill is reported to the House and stands for third reading.

When a Treaty, which does not involve fiscal changes or the expenditure of public moneys, has to be approved by Parliament, a Bill to that effect must be passed, as Parliament can only express its opinion by the joint consent of its three constituent parts, namely, the Crown, the Senate and the House of Commons; but the adoption of a resolution is not required before introduction of that Bill. Notice is given under Standing Order 41 and the Bill goes through its ordinary stages. On the second reading a member may move either the six months' hoist or an amendment declaratory of some principle adverse to, or differing from the policy of the Bill or expressing any opinion as to the circumstances connected with the conclusion of the Treaty. The main debate on the Treaty should take place on this motion for the second reading of the Bill. As to the other stages of the measure, procedure follows its ordinary course.

## CHAPTER IX

### STANDING AND SPECIAL COMMITTEES; WITNESSES

REPORT BY PRINTING COMMITTEE.  
SPECIAL COMMITTEES.  
QUORUM.  
REPORTS FROM COMMITTEES.  
CERTIFICATE FOR SUMMONS OF WITNESSES.  
PAYMENT OF WITNESSES.  
EXCEPTIONS.

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#### STANDING ORDERS

65. [10th July, 1906; 19th February, 1909; 27th March, 1924; 22nd March, 1927]. (1) At the commencement of each session, a special committee, consisting of five members, shall be appointed, whose duty it shall be to prepare and report, with all convenient speed, lists of members to compose the following standing committees of the House:

- (a) on Privileges and Elections, to consist of 29 members, 10 of whom shall constitute a quorum;
- (b) on Railways, Canals and Telegraph Lines, to consist of 60 members, 20 of whom shall constitute a quorum;
- (c) on Miscellaneous Private Bills, to consist of 50 members, 15 of whom shall constitute a quorum;
- (d) on Banking and Commerce, to consist of 50 members, 15 of whom shall constitute a quorum;
- (e) on Public Accounts, to consist of 50 members, 15 of whom shall constitute a quorum;
- (f) on Agriculture and Colonization, to consist of 60 members, 20 of whom shall constitute a quorum;
- (g) on Standing Orders, to consist of 20 members, 8 of whom shall constitute a quorum;
- (h) on Marine and Fisheries, to consist of 35 members, 10 of whom shall constitute a quorum;
- (i) on Mines, Forests and Waters, to consist of 35 members, 10 of whom shall constitute a quorum;
- (j) on Industrial Relations, to consist of 35 members, 10 of whom shall constitute a quorum;

- (k) on Debates, to consist of 12 members, 7 of whom shall constitute a quorum;
- (l) on External Affairs, to consist of 35 members, 10 of whom shall constitute a quorum.

(2) On Printing, to act as members on the part of this House on the Joint Committee of both Houses on the subject of the printing of parliament, to consist of 23 members.

On the Library of Parliament, so far as the interests of this House are concerned, and to act as members of the Joint Committee of both Houses, to consist of 21 members.

Provided that a sufficient number of members of joint committees shall be appointed so as to keep the same proportion in such committees as between the memberships of the House of Commons and Senate.

(3) The Clerk of the House shall cause to be affixed, in some conspicuous part of the House, a list of the several standing and special committees appointed during the session.

66. [20th December, 1867]. On motion for printing any paper being offered, the same shall be first submitted to the Joint Committee on Printing, for report, before the question is put thereon.

67. [20th December, 1867; 22nd March, 1927; 12th July, 1955]. (1) No special committee may, without leave of the House, consist of more than fifteen members; such leave shall not be moved for without notice; and in the case of members proposed to be added, after the first appointment of the committee, a new notice shall be given including the names of the members proposed to be added.

(2) A majority of the members of a special committee shall be a quorum unless the House has otherwise ordered.

68. [20th December, 1867]. Reports from standing and special committees may be made by members standing in their places, and without proceeding to the Bar of the House.

69. [20th December, 1867]. (1) No witness shall be summoned to attend before any committee of the House

unless a certificate shall first have been filed with the chairman of such committee, by some member thereof, stating that the evidence to be obtained from such witness is, in his opinion, material and important.

(2) The Clerk of the House is authorized to pay out of the contingent fund to witnesses so summoned a reasonable sum per diem during their travel and attendance, to be determined by Mr. Speaker, and a reasonable allowance for travelling expenses.

(3) The claim of a witness for payment shall state the number of days during which he has been in attendance, the time of necessary travel and the amount of his travelling expenses, which claim and statement shall, before being paid, be certified by the chairman and clerk of the committee before which such witness has been summoned.

(4) No witness residing at the seat of government shall be paid for his attendance.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**285.** (1) Originally the word "Committee" was used for the member to whom the study of a Bill was entrusted. In 1557 a Bill was committed to be perused by Mr. Fitzchamberlyn. He was the committee. When more than one person was selected to study a measure the committee was referred to in the plural as "the Committee have held six sittings, the Committee are of the opinion, etc." This style is still in use in the United Kingdom House of Parliament.

(2) A committee which is appointed beforehand, for the consideration of all subjects of a particular class, arising in the course of the session, is denominated a "standing" committee. C., No. 1856.

(3) Prior to 1906 there was no Standing Order for the appointment of the Standing Committees, but a motion was first made that they be appointed for certain purposes and, when that was passed, it was moved that a special committee be appointed to prepare lists of members to compose the select Standing Committees ordered by the House. See B., 2nd ed., pp. 493-4.

(4) The motion for the appointment of the Special Committee to prepare the lists of the Standing Committees is made as soon as the speech from the throne has been reported by the Speaker on the return of the House from the Senate.

(5) This committee reports the selection of the Standing Committees without delay and the report is generally adopted immediately after its presentation.

(6) It is then moved that the said Standing Committees be severally empowered to examine and enquire into all such matters and things as may be referred to them by the House, and to report from time to time their observations and opinions thereon with power to send for persons, papers and records.

**286.** It is important that the motion for the appointment of the committee should state whether the committee shall report from time to time, for if it should report once without having been given such power, it will be defunct but may be revived. Special authorization should also be given to sending for persons, papers and records.

A select special committee ceases to exist on the moment its final report is presented to the House. The report cannot afterwards be sent back to the committee with instruction to

amend it in any particular. If further proceedings are desired it is necessary to revive the committee. (105 C.J., 201; M. 486.)

**287.** A committee upon a matter of privilege may be appointed and nominated forthwith without notice, such a committee having been held not to be governed by any of the orders applicable to the appointment and nomination of other Select Committees.

**288.** Committees are regarded as portions of the House and are governed for the most part in their proceedings by the same rules which prevail in the House.

Every question is determined in a committee in the same manner as in the House to which it belongs. M. 478.

Until the quorum is present, the committee cannot proceed to business. It is the duty of the Clerk attending the committee to call the attention of the Chairman to the fact when the number of members present falls below the quorum, whereupon the Chairman must suspend the proceedings until a quorum be present or adjourn the committee to some future day. See May, 461. Red. 2, 189.

What is the effect of the absence of a quorum upon the validity of a committee's proceedings? The Speaker of the British House of Commons, speaking of a Bill which was in committee when the latter rose for want of a quorum said: "On the assumption that the committee met and proceeded without a quorum, I should be of opinion that the committee, properly speaking, was never constituted and did not meet, and that none of the work done could be accepted as being the work of that particular committee. If there is a quorum when a committee begins to work and that quorum melts away, it will be for the House, I think, in each case, to determine whether it would be necessary to recommit the Bill. Parl. Deb. 177, 4s, 716.

If several members persist in not attending a committee to which they have been appointed, in order to prevent it from dealing with a question to which they are opposed, they can be adjudged guilty of contempt. Every member of a legislative body is bound to serve on a committee to which he has been duly appointed, unless he can show the House that there are conclusive reasons for his non-attendance. If a member is not excused and nevertheless persists in refusing to obey the order of the House, he can be adjudged guilty of contempt.

(B. 462.) It is the duty of Standing Committees, as of all committees, to give to the matters referred to them due and sufficient consideration. (M. 464.)

**289.** Disobedience to the orders of a committee is a contempt of the House by which the committee was appointed, provided the orders are within the scope of the committee's authority. The following instances are given in May's 15th edition: disobedience to orders for the attendance of persons made by committee duly authorized in that behalf, disobedience to orders for the production before committees of papers or other documents; delivering to another person a book or copies of letters some of which related to the affairs of a certain company after receiving an order to lay before a committee all books and writings in his custody relating to that company; refusing to permit books or papers to be inspected when required by orders of the committee.

**290.** The term "select" or "special" committee, is usually applied to designate a committee appointed to consider a particular subject, on the occurrence of the occasion for its appointment, as where a committee is appointed to consider a petition or report or to make special enquiries. Select Committees are sometimes turned into Standing Committees by instructions enlarging the original order of reference.

**291.** When the House is engaged in nominating the members of a committee, it is not competent for an honourable member to open the whole subject. (Hans., 3s., Vol. 239, p. 239.)

When the House is considering a motion, of which notice has been given, for the appointment of a select committee, a member cannot move in amendment that the committee be given wider powers than those which were set down in the notice. On the 13th March 1938, a minister moved that a special committee be appointed to study the question of redistribution of electoral districts and to enquire into the methods whereby the source of campaign funds may be traceable. Two amendments were moved: one proposed that the committee's powers be extended so as to investigate amounts of contributions over \$100.00 for the past ten years; the other proposed to investigate the methods whereby lumbermen, fishermen, seamen and miners in British Columbia may be enabled to exercise their franchise. The Speaker ruled both amendments out of order on the ground



that they raised new questions not contemplated in the notice of motion and proposed to extend the committee's powers far beyond those set down in the notice, and also that the necessity of giving notice will be nullified if such notice is not used as a guidance for the decision of the House. (Can. C.J., Vol. 77, pp. 184-5.)

**292.** (1) A member who is ill may ask the House through another member to be excused from attendance on a committee.

(2) A member has been substituted for another on a Committee of the Canadian Commons on account of the member originally appointed having acted as counsel for the parties interested in the matter before the committee. Can. Com. J., (1884), 239, 240; or on account of a member of his family being directly affected by the issue; or on account of a member being unable to attend.

(3) The Speaker in the British House has refused to allow a motion for the nomination of another member to be made after the number of members of which the committee had been ordered to consist had been nominated, without leave of the House previously obtained. 112 C.J. 157.

(4) A member must be totally opposed and not simply take exception to certain particulars of a Bill or motion, in order to be excluded from a committee. A member who opposes merely the appointment of a committee cannot be considered as coming within the meaning of the rule. B., 461, 462.

**293.** On a motion that a select committee be appointed to examine the recent rise in the cost of living and an amendment that the committee be empowered to examine the effort of present government policies in lessening agricultural production, the Speaker ruled as follows: "Though I find this amendment relevant to the main motion, I cannot yet overlook the fact that questions of policy are so complex that they should not be moved as corollaries to the appointment of such a committee as the one now proposed. It is against all parliamentary usage to refer questions of policy to a fact finding committee. I find that the great Speaker Denison decided in 1877, and his decision still holds good, that "it is not competent, without notice to add a distinct question to a motion or to combine in one two distinct propositions." When an amendment is irregular in one particular, the whole of it is not admissible and must be ruled out of order. This is sound practice and, for that reason,

I declare the amendment out of order. C.J., Vol. 84, p. 114-115.

**294.** (1) A select committee, having only a delegated authority, cannot, without the leave of the House, divide itself into sub-committees and apportion its functions among such sub-committees, or delegate to a sub-committee any of the authority delegated to it by the House (Parl. Deb. 1819, 39. cc 776-77). A committee may, however, avail itself of the services of its members individually or in the form of sub-committees for purposes connected with the business of the committee, such as drafting, which do not involve a delegation of authority. In special cases, however, committees have been empowered to divide themselves into sub-committees and to apportion the subjects referred to their consideration between such committees, such sub-committees having the same powers as the whole committee; or to appoint one or more sub-committees with power to send for persons, papers and records, and to sit notwithstanding any adjournment of the House, to take evidence or to consider any matter that may be referred to them by the committee. (C.J. 1932-33, 266; do 1933-4, 12; do 1934-5, 32.)

(2) Committees which have been empowered to appoint sub-committees have also been given certain directions by the House relating to the appointment and powers of sub-committees, (C.J. 1943-4, 13, 14) with respect to co-ordination, appointment of a chairman or the fixing of the quorum. M.

(3) Where committees are empowered to appoint sub-committees they are sometimes authorized to appoint from outside their own body additional persons to serve on such sub-committees. C.J. 1920, 44, 151.

A sub-committee may not report directly to the House, but only to the committee by which it has been appointed. Where the examination of witnesses is delegated to a sub-committee, it is customary for the appointing committee to report the evidence taken by the sub-committee to the House.

(4) On giving power to select committees to appoint sub-committees, the House has also ordered that every such sub-committee must report any evidence taken to the select committee. (C.J. 1943-44, 13-14.)

**295.** (1) Under Standing 12, the Speaker's decisions on points of order are subject to an appeal to the House and, under Standing Order 59, sec. (4), the decisions of the chair-

man of a committee of the whole in questions of order are subject to an appeal, not to the committee itself, but to the House. No Standing Order provides for an appeal from the Chairman of a Standing or select committee; but it has sometimes happened in Standing and select committees that appeals were taken from the chairman's decisions to the committee and even to the House itself. On July 24, 1956, an appeal was taken to the House from the Standing Committee on Banking and Commerce, and the Speaker ruled that the chairman's ruling should be settled in the Committee and not reported to the House. The House cannot be guided in a matter of this kind by precedents from the United Kingdom House of Commons where appeals are unknown. An appeal from a decision given by the Speaker or a Chairman is not a postulate of British parliamentary law, but has been established in Canada by a Standing Order which does not apply to select or standing committees. It seems therefore that a reversal by the committee, of the chairman's ruling, would be ineffective.

(2) A committee has no authority to punish one of its members or other person, for any offence committed against it, as by disorderly words or contemptuous conduct, as, for example, when a witness refuses to testify, or prevaricates, but can only report such offences to the House for its animadversion. C., 1914.

**296.** A private member's notice of motion that the government should give consideration to the advisability of setting up a special committee of the House is out of order for it takes for granted that the government is vested with the right to appoint committees of the House. The Executive Power cannot encroach upon the Legislative; they are both distinctly described in the British North America Act where it is also stated that the Constitution of Canada shall be similar in principle to that of the United Kingdom.

**297.** (1) A committee, either select or standing, has no power to send for any papers unless duly authorized to do so by resolution of the House. For this reason every motion for the appointment of a select committee provides that it will have power to send for papers and records.

(2) As for Standing Committees the following motion is passed as soon as they are appointed at the commencement of the session:

"That the Standing Committees of the House shall severally be empowered to examine and inquire all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon; with power to send for persons, papers and records."

(3) A committee cannot require an officer of a public department to produce any paper which, according to the rule and practice of the House, it is not usual for the House itself to order to be laid before it. If consideration of public policy can be urged against a motion for papers it is either withdrawn or otherwise dealt with according to the judgment of the House.

**298.** (1) A committee having the right to exclude strangers at any time, it may be inferred that it has the right to sit in private, and its proceedings are protected by privilege. The publication of its proceedings in that case would be an offence which the House could deal with after having received a report thereon from the committee.

(2) When a committee deems it advisable to hold a secret meeting, it would be wise to agree to a resolution such as the following which was adopted with respect to a private Bill on 21 May 1941, by a committee of the United Kingdom House of Commons:

"The Committee will sit in private, that is to say, the press and general public will be excluded from the proceedings. The agents for the promoters and the petitioners have been asked to furnish the clerk with a nominal list of all persons, including counsel, whose attendance is essential to the proceedings. The room will be cleared, and the clerk, with the assistance of the agents, will check the names on the lists at the door of the room as each person enters. A copy of the complete list will be given the Sergeant-at-Arms for transmission to the police who will have instructions to admit no person whose name is not on the list."

**299.** (1) When in the opinion of the House, secrecy ought to be maintained, Secret Committees are appointed, whose enquiries are conducted throughout with closed doors, and it is the invariable practice for all members, not on the committee, to be excluded from the room throughout the whole of its proceedings.

(2) There is a distinct difference between committees sitting in camera for the purposes of deliberations and secret committees. The proceedings of secret committees are the property

of the House of Commons after the committee has reported, and no true question of privilege arises if a member divulges to the House those proceedings. The purpose behind in camera meetings is that the members may feel free to negotiate, to discuss, to deliberate and sometimes perhaps to compromise without the glare of publicity, which might add to the difficulties of agreeing to reports; and it is desirable that these proceedings be treated as in confidence. The final decision rests with the members themselves. C.J. Vol. (1955). See statement by Acting Deputy Speaker G. T. Applegate.

**300.** (1) Committees are not permitted to sit and transact business during the sittings of the House without obtaining special leave upon a report.

(2) Committees, in the Canadian Commons, frequently sit on Saturday.

(3) A motion that a Select Standing Committee be allowed to sit while the House is in session cannot be made without a report on the subject having first been received from the committee. (Can. C.J., 1895, Vol. 29, p. 241.)

**301.** (1) Committees may be authorized by the House to adjourn from place to place as may be found expedient—or meet at a particular place, but no committee can sit after a prorogation. B. 467.

(2) In 1873, a select committee was appointed to inquire into certain matters relating to the Canadian Pacific Railway with power to sit after the prorogation; but on close examination, it was found and agreed by the leaders of the House that this procedure was not regular. Sir John A. MacDonald, addressing the House on the subject, on the 3rd November, 1873, said: "On consideration, we found that this House could not confer the power (to sit after prorogation) and for a very substantial reason, because if this Parliament could appoint a committee to sit during the recess it could also appoint a Committee of the Whole House to sit during the recess, and thus the prerogative of the Crown to prorogue would be invaded, and Parliament as a Committee of the Whole might sit indefinitely." It was then arranged that the House should take a long adjournment so as to enable the committee to complete its investigation and frame its report.

**302.** (1) Members of the House of Commons are entitled to be present at the sittings of committees of the House, as well

during the deliberations of the committees as while witnesses are being examined; (but they must not interfere in the proceedings); and though, if requested to retire, they rarely make any objection, and ought, on the grounds of established usage and courtesy to the committee, immediately to retire when the committee is about to deliberate, the committee, in case of their refusal, has no power to order them to withdraw. As members cannot be excluded from a committee room by the authority of the committee, if it desires that other members should not be present at its proceedings, and such members refuse to withdraw, it should adjourn and, if they persist in attending at subsequent meetings, the committee should apply to the House for power to effect their exclusion. M. 15th ed. 610.

(2) A committee has been instructed to hear parties by counsel or otherwise; and, on the other hand, the order of the House has provided that such hearing of persons interested shall be at the discretion of the committee.

(3) Strangers are permitted to be present during the sittings of a Committee of the Commons, but they may be excluded at any time, and are to withdraw when the committee is discussing a particular point of order, or deliberating on its report.

**303.** (1) The Standing Committee having met, the members will proceed to elect a Chairman. In case a difference of opinion arises as to the choice of a Chairman, the procedure of the House with respect to the election of a Speaker should be followed.

(2) The names of the members present each day must be entered in the minutes by the Clerk, and may be reported to the House on the report of the committee; but it is usual to do so only when the question is of particular importance, and all the proceedings are reported.

(3) Committees should be regularly adjourned from day to day, though the Chairman is frequently allowed to arrange the day and hour of sitting, but this can be done only with the general consent of the committee. B., 466.

**304.** (1) A committee can only consider those matters which have been committed to it by the House. C.J., Vol. 65; 539, 871.

(2) A committee is bound by, and is not at liberty to depart from, the order of reference. (B. 469.) In the case of a Select Committee upon a Bill, the Bill committed to it is itself

the order of reference to the committee, who must report it with or without amendment to the House. M. 468.

(3) When it has been thought desirable to do so, the House has enlarged the order of reference by means of an instruction or in the case of a Select Committee upon a Bill by the committal to it of another Bill. Mandatory instructions have also been given to Select Committees restricting the limits of their powers or prescribing the course of their proceedings, or directing the committee to make a special report upon certain matters.

(4) Sometimes a committee may have to obtain leave from the House to make a special report when its order of reference is limited in scope. B. 471.

**305.** Sometimes when a committee requires special information it will report to the House a request for the necessary papers which will be referred to it forthwith. Can. C.J., Vol. 9, p. 176.

The committee can obtain directly from the officers of a department such papers as the House itself may order, but in case the papers can be brought down only by address, it is necessary to make a motion on the subject in the House through the Chairman. B. 470, 471.

**306.** (1) Where Select Committees have been appointed to inquire into matters in which the private interests, character or conduct of members of the House of Commons or other persons are concerned, the committees may hear counsel on behalf of such persons, the order of the House for that purpose being obtained on petitions presented to the House, on the report of the committee, or on a motion to that effect. M. 481. B. 469.

(2) If any information comes before any special committee charging any member of the House, the committee shall only acquaint the House with the matter of such information without proceedings further thereupon.

**307.** The Senate or the House of Commons may at any time order witnesses to be examined on oath before any committee.

Any committee of the Senate or House of Commons may administer an oath to any witness examined before such committee.

The signing of the evidence is not essential when the evidence has been taken by shorthand reporters of the committee.

The Committee clerk has charge of all the evidence and papers before the Committee.

**308.** To tamper with a witness in regard to the evidence to be given before either House or any committee of either House or to endeavour directly or indirectly, to deter or hinder any person from appearing or giving evidence is a breach of privilege. A resolution to this effect was passed by the House of Commons on 21 February, 1700, and has been regularly renewed in every succeeding session, and in numerous instances persons have been punished for offences of this kind. Corruption or intimidation, though a usual, is not an essential ingredient in this offence. It is equally a breach of privilege to attempt by persuasion or solicitations of any kind to induce a witness not to attend, or to withhold evidence or to give false evidence. This matter was considered in 1935 by a committee of the Commons (United Kingdom) who reported that, in their opinion, it was a breach of privilege to give any advice to a witness which took the form of pressure or of interference with his freedom to form and express his own opinions honestly in the light of all the facts known to him, and the House resolved that it agreed with the Committee in their report. H.C. 84, p. VII (1934-35); C.J. (1934-35) 294.

**309.** The privilege of freedom from arrest and molestation is attached to all witnesses summoned to attend before either House or Parliament, or before parliamentary Committees, and to others in personal attendance upon the business of Parliament, in coming, staying and returning. M. 128.

Every witness attending before the House or any committee thereof may claim the protection of the House in respect of the evidence he is called upon to give and also ask leave to be assisted by counsel. B., 3rd ed., 157, 165, 166, 167; M., 11th ed., 25-126.

**310.** If a witness whose attendance is desired by the House or by a committee should be in the custody of the keeper or any prison or sheriff, the Speaker is ordered to issue his warrant, which is personally served upon the keeper or sheriff by a messenger of the House, and by which he is directed to bring the witness in his custody to be examined. M. 578.



If a witness should be in custody, by order of the other House, his attendance is secured by a message, desiring that he may attend in the custody of the Black Rod or the Sergeant-at-Arms, as the case may be, to be examined. M. 578.

**311.** If a witness should refuse to appear on receiving the order of the Chairman, his conduct will be reported to the House and an order immediately made for his attendance at the bar or before the committee. If he would still refuse to obey, he may be "ordered to be sent for in custody of the Sergeant-at-Arms", and the Speaker be ordered to issue his warrant accordingly, or he may be declared guilty of a breach of privilege and ordered to be taken in the custody of the sergeant. Similar proceedings are taken when a witness refuses to answer questions.

**312.** Whenever the evidence of a Senator is required before a Committee of the Commons, it is usual for the Chairman to move in the House that a message be sent to the Senate requesting their Honours to give leave to ....., one of their members, to attend and give evidence before the Select Committee, etc.

A motion that a message be sent to the Senate requesting leave for a Senator to give evidence before a Select Committee of the House of Commons cannot be entertained until a report thereon has been presented by the Committee. C.J., Vol. 59, p. 243.

**313.** In case the evidence of a member of the Commons is required before a Committee of the House, it is customary for the Chairman to request him to come, and not to address or summon him in the ordinary form.

**314.** Statements made to Parliament in the course of its proceedings are not actionable by law. (M. 133.) While the House punishes misconduct with severity, it is careful to protect witnesses from the consequences of their evidence given by order of the House; and on extraordinary occasions, where further protection has been deemed necessary to elicit full disclosures, Acts have been passed to indemnify witnesses from all the penal consequences of their testimony. M. 583.

(2) A witness has been allowed the assistance of counsel when his evidence may tend to criminate himself. Parl. Deb. 1873, p. 38. Journal, 70; Can. Com. J. 1887, 188-189.

**315.** Both Houses will treat the bringing of legal proceedings against any person on account of any evidence which he may have given in the course of any proceedings in the House or before one of its committees as a breach of privilege.

**316.** No witnesses shall be paid unless the certificate mentioned in the first section of Standing Order 69 shall have been first filed with the Chairman of the committee by a member thereof.

**317.** In case a committee requires its evidence to be printed for its own use in the course of an enquiry, it will make a report requesting that this be done. Formerly it had to apply to the Joint Committee on Printing, but this practice had to be abandoned in view of the fact that the Printing Committee consists of senators as well as members and the matter is one which concerns the Commons only.

**318.** (1) When the Speaker has called for reports of committees, during the progress of routine business, the Chairman, or in his absence, a member of the committee, will rise in his place, and having stated the nature of his report, will send it to the Table where it will be read by the Clerk Assistant. If it is long, the House generally dispenses with the reading, as all reports are printed in the Votes and Proceedings for the information of members as soon as they are laid before the House. The reports which are records of the House should, under section 133 of the B.N.A. Act be drafted in English and French like all other proceedings of the two Houses.

(2) It is the opinion of the committee, as a committee, not that of the individual members, which is required by the House, and, failing unanimity, the conclusions agreed to by the majority are the conclusions of the committee. No signatures may, therefore, be attached to the report for the purpose of showing any difference of opinion in the committee or the absence thereof; nor may the report be accompanied by any counter-statement, memorandum of dissent, or protest from any dissenting or non-consenting member or members; nor ought the committee to include in its report any observations which the minority or any individual member desires to offer, but which are not subscribed to by the majority; nor may a draft report which has been submitted to the committee, but has not been entertained by it be printed as an appendix to the report.

If a member disagrees to certain paragraphs in the report, or to the entire report, he can record his disapproval by dividing the committee against those paragraphs to which he objects, or against the entire report, as the circumstances of the case require; and can put on record his observations and conclusions, as opposed to those of the majority, by proposing an alternative draft report or moving an amendment to the question for reading the draft report a second time. May 15th, 617.

(3) A member will not be permitted in presenting a report to make any remarks on the subject-matter; he can only properly do so on a motion in reference to the report.

**319.** The report of the committee must be signed by the Chairman. No other signature should be affixed to a report for the purpose of showing any division of opinion in the committee, nor can it be accompanied by any counter statement from the minority, as such is unknown in British parliamentary practice. The Chairman only signs by way of authentication on behalf of the committee. He should sign even if he dissented with the majority of the committee. No minority report should be made to the House. Cush. 1935, 1937.

**320.** (1) It is the general custom not to report the evidence until the enquiry has been completed, and the report is ready to be presented; but where an intermediate publication of the evidence, or more than one report, has been thought desirable, the necessary power has been conferred upon the committee on its appointment, or the House has granted leave subsequently, on the application of the Chairman, for the committee to "report its opinions or observations, from time to time", or to "report minutes of evidence" only, from time to time. In such cases, the committee is to exercise its discretion as to reporting the evidence from day to day, or otherwise; and as to the best division of the evidence for the purpose of reporting it to the House. M. 15th ed., 619.

(2) When a committee have not completed their enquiries before the end of the session, they report the fact to the House together with any evidence which they may have taken. In their report, they usually recommend the reappointment of the committee in the next session. This course has usually been followed, and the evidence taken in the previous session has been referred to the newly appointed committee. M. 486, 15th ed., pp. 621-2.

(3) As to the report of a committee presented during a previous session, motion must first be made that it be considered during the current session, and, if such a motion is carried, the House may appoint a day for consideration of the report.

A report may be adopted only in part or an amendment imposing a condition to the motion for concurrence may be moved.

(4) A committee cannot report the evidence taken before a similar committee in a previous session, except as a paper in the appendix, unless it receives authority from the House to consider it.

(5) No act done at any committee should be divulged before the same be reported to the House. (Clarendon 1826 ed. II, p. 159). Upon this principle the Commons, on April 21, 1837, resolved "That the evidence taken by any select committee of this House, and the documents presented to such committee and which have not been reported to the House, ought not to be published by any member of such committee or by any other person. C.J. 1837, p. 282. Where the public is admitted this rule is usually not enforced. Parl. Deb. 1875, 223, cc. 787, 1114. The publication of proceedings of committees conducted with closed doors or of reports of committees before they are available to Members will, however, constitute a breach of privilege. C.J., 1899, 237.

(6) Where a Committee is unable to agree upon a report, it may make a special report to that effect, together with the minutes of the evidence taken before it or merely report the minutes of the evidence taken before it to the House without any observations or expression of opinion. M. 15th ed., 618.

**321.** If it be expedient the House appoint the consideration of the report of a Select Committee for a future day, by a motion made on the presentation of the report, or by a subsequent motion for that purpose. M. 488.

The House may appoint the consideration of the report of a Select Committee for a future day by giving forty-eight hours' notice. It will then be taken up when "motions" are called at the commencement of the sitting.

**322.** When the motion to concur is proposed the report may be referred back to the committee for further consideration or with instruction to amend it in any respect. It is not competent for a committee to reconsider and reverse its own decision, but if the House resolves that such reconsideration is necessary, the correct procedure is for the House to give the committee instructions which will enable it to consider the whole question again. See B. 480.

An amendment to recommit a report of a Standing Committee with instructions to amend it so as to recommend that at the next session of Parliament the committee be empowered to consider new matters related to the subject-matter referred to the committee, was ruled out on the ground that the House cannot instruct a committee to take certain matters in consideration at a future Session of Parliament as references made by the House to a committee lapse at prorogation. (Can. C.J., Vol. 72, pp. 473-4.)

**323.** (1) A committee report may be ruled out of order though it has been received by the House, and a motion to concur therein cannot then be entertained. (Can. C.J., Vol. 8, p. 216.)

(2) A report from a committee cannot be amended by the House, but it must be referred back to the committee. (Can. C.J., Vol. 61, pp. 439-440.)

(3) On the consideration of a report, motions have been made expressing the agreement or the disagreement of the House therewith, or motions are made which are founded upon, or which enforce the resolutions of the Committee. M. 488.

(4) A committee has been instructed to report the evidence of a witness, although given when its quorum was incomplete. M. 473, note 9.

**324.** (1) Until the report and evidence have been laid upon the Table, it is irregular to refer to them in debate, or to put questions in reference to the proceedings of the committee.

(2) When the evidence is before the House it may be debated at length, but members will not be permitted to discuss the conduct or language of members of the committee, except so far as it appears on the record.

(3) If a document has been formally laid before a committee of the House, and entered upon its minutes, it is in the

possession of the House, and it is a breach of privilege for any person or department to withhold it. A member who claims the production of papers for his own justification is not entitled to them as a matter of privilege, but the question is one which the House must determine for itself on motion. Eng. Hans., Vol. 114 3s., p. 373.

**325.** (1) When the report does not contain any resolutions, recommendations or other propositions for consideration of the House, it does not appear that any further proceedings in reference to it as a report are necessary. Every session, Select Committees make reports of this description, containing a statement of facts, or of the evidence on the subject of enquiry; but as they do not contain any proposition which can be agreed to by the House, they are simply printed for the information of the members.

(2) Concurrence in reports from Select Committees is, in non-controversial cases, moved when motions are called by the Speaker during routine business. If it be expedient, the House will appoint the consideration of a report for a future day. By a motion made for that purpose in the British House, the report of a committee presented during a previous session has been taken into consideration. Eng. J. 86, p. 161.

(3) Under S.O. 41 notice must be given for the motion for concurrence in reports of committees, said concurrence being a resolution of the House. If such a motion is brought up without notice, it can only be allowed to pass by unanimous consent.

(4) When a motion is made for concurrence in a Select Committee Report, it is competent for the House to adopt it, reject it, refer it back to the committee or decide that consideration of the report will take place "this day six months". (Can. C.J., Vol. 55, pp. 293-4.)

**326.** The report of a Standing Committee should be considered final only when it is adopted by the House, because, until then, the House can refer it back to the committee with instruction to amend it in any particular. (Can. C.J., Vol. 65, p. 476.)

**327.** When the attendance of a witness is desired, to be examined at the bar, by the House of Commons, or by a Committee of the whole House, he is simply ordered to attend at a stated time; and the order, signed by the Clerk of the House,

is served upon him personally, but if he is at a distance, it is forwarded to him by the Sergeant-at-Arms, either by post, or, in special cases, by a messenger. If the witness does not obey the order for his attendance, he may be ordered to be sent for in custody of the Sergeant-at-Arms, and Mr. Speaker may be ordered to issue his warrant accordingly; or he may be declared guilty of a breach of privilege, and ordered to be taken in the custody of the Sergeant. M. 577-8.

**328.** (1) The Senate or the House of Commons may administer an oath to any witness examined at the bar of the Senate or of the said House. R.S.C., ch. 10, s. 23.

Where any witness to be examined under oath conscientiously objects to take an oath, he may make his solemn affirmation or declaration.

Any oath or affirmation may be administered by: (a) the Speaker of the Senate or of the House of Commons; (b) the Chairman of any committee of the Senate or House of Commons; (c) or such person or persons as may from time to time be appointed for that purpose, either by the Speaker of the Senate or by the Speaker of the House of Commons, or by any standing or other order of the Senate or House of Commons respectively. do. 30.

When a witness is examined by the House of Commons, or by a committee of the whole House, he attends at the bar, which is then kept down. If the witness be not in custody, the mace remains upon the table. . . . When a witness is in the custody of the Sergeant-at-Arms, or is brought from any prison in custody, it is the usual, but not the constant, practice for the Sergeant to stand with the mace at the bar. M. 13, 584-5.

(2) Members of the House are always examined in their places. M. 585. Under a resolution passed in early years, members "ought not to be brought to the bar unless they are accused of any crime".

**329.** According to the strict rule of the House, the Speaker should put all questions to the witness at the bar, and members should only suggest to him the questions which they desire to be put; but, for the sake of avoiding the repetition of each question, members are usually permitted to address their questions directly to the witness, which, however, are still supposed to be put through the Speaker. If a question be objected to,

or if any difference should arise in regard to the examination of a witness, he is directed by the Speaker to withdraw before a motion is made or the matter is considered. M. 584.

**330.** In Committee of the whole House, any member may put questions directly to the witness. M. 585.

Where counsel are engaged (before the House or in Committee of the Whole) the examination of witnesses is mainly conducted by them, subject to the interposition of questions by members, and where any question arises in regard to the examination, the parties, counsel and witnesses are directed to withdraw. M. 585.



## CHAPTER X

### PETITIONS

HOW AND WHEN PRESENTED.

NO DEBATE.

MEMBERS ANSWERABLE.

ENDORSATION.

SIGNATURE AND PRAYER.

IMMEDIATE DISCUSSION MAY BE PERMITTED.

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### STANDING ORDERS

70. [20th December, 1867; 29th April, 1910; 22nd March, 1927]. (1) A petition to the House may be presented by a member at any time during the sitting of the House by filing the same with the Clerk of the House.

(2) Any member desiring to present a petition in his place in the House must do so during routine proceedings and before introduction of bills.

(3) On the presentation of a petition no debate on or in relation to the same shall be allowed.

(4) Members presenting petitions shall be answerable that they do not contain impertinent or improper matter.

(5) Every member presenting a petition shall endorse his name thereon.

(6) Petitions may be either written or printed; provided always that when there are three or more petitioners the signatures of at least three petitioners shall be subscribed on the sheet containing the paper of the petition.

(7) On the next day following the presentation of a petition the Clerk of the House shall lay upon the Table the report of the Clerk of Petitions upon the petitions presented and such report shall be printed in the Votes and Proceedings of that day. Every petition so reported upon, not containing matter in breach of the privileges of this House and which, according to the standing orders or practice of this House, can be received, shall then be deemed to be read and received.

(8) No debate shall be permitted on the report but a petition referred to therein may be read by the Clerk of the House at the Table, if required; or if it complain of some present personal grievance requiring an immediate remedy, the matter contained therein may be brought into immediate discussion.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**331.** The right of petitioning the Crown and Parliament for redress of grievances is acknowledged as a fundamental principle of the constitution, and has been uninterruptedly exercised from very early times.

The House of Commons is a representative institution. It only considers questions submitted by its elected members. The ordinary citizen has no right to appear personally before the House of Commons. If he has a grievance, he may present a petition in writing through the medium of a member and in accordance with rules laid down in the Standing Orders of the House. The only individuals, apart from members, who may be heard at the Bar of the House, are persons summoned for breach of privilege and witnesses when it happens that the House itself is holding an investigation. Nobody else is permitted to address the House of Commons.

The old practice of addressing petitions to the House of Commons has but little life at the present day. It is no doubt the birthright of every Canadian to apply to Parliament for the redress of grievances. Thanks, however to the ample development of courts of Justice and administrative bodies, the petitions against denials of right have almost disappeared.

**332.** Every petition should commence with the superscription: "To the Honourable the House of Commons in Parliament assembled." Then should follow the formula: "The Petition of the undersigned . . . humbly sheweth." Follows the subject-matter on the petition, in the third person through, and commencing each paragraph with the word "That." The conclusion should be the "Prayer" tersely and clearly expressing the particular object which the petitioners have in view in coming before Parliament. The petition should close with the formal words: "and your petitioners, as in duty bound, will ever pray." Here follow the signatures which must be in writing and not typewritten or printed.

Without a prayer, a document will not be taken as a petition; and a paper, assuming the style of a declaration, an address of thanks, or a remonstrance only, without a proper form of prayer, will not be received.

Petitions not addressed to "The Honourable House of Commons in Parliament assembled" and containing no prayer cannot be received. (Can. C.J., Vol. 53, p. 342.)

**333.** Petitions may be written, or typewritten, or printed, and may be in French or English; they must be free from erasures or interlineations. The signatures must be written, not printed, pasted or otherwise transferred. No appendix must be attached thereto, whether in the shape of letters, affidavits, certificates, statistical statements or documents of any character.

The language of a petition should be respectful and temperate and free from disrespect to the Sovereign, or offensive imputation upon the character and conduct of Parliament, or the Courts of Justice, or other tribunal, or constituted authority.

A document purporting to be a petition but distinctly headed as a remonstrance, though concluding with a prayer, has been refused in the House of Commons of the United Kingdom. (70 Hansard, 3s., p. 345.)

Remonstrances respectfully worded and concluding with a proper form of prayer may be received.

**334.** (1) A petition must have original signatures or marks, and not copies from the original, nor signatures of agents on behalf of others, except in case of incapacity by sickness; and it must not have letters, affidavits, appendices or other documents annexed. The signatures must be written upon the petition itself and not pasted upon or otherwise transferred to it. (M. 611.)

(2) Petitions of corporations must be under their common seal.

(3) If the Chairman of a public meeting signs a petition on behalf of those so assembled, it is only received "as the petition of the individual", and is so entered in the minutes, because the signature of one party for others cannot be recognized. B. 236.

Petitions from one person are frequently received and are quite in order. B. 235.

(4) Petitions of a general character, signed by persons other than those immediately interested and asking for a modification or change of the financial or fiscal policy of the Dominion, on the ground that such change will be beneficial to the country at large, stand precisely in the position of petitions asking for an imposition of taxes for general purposes and may consequently be received by the House. (Can. C.J., Vol. 11, page 37.)

"A petition forwarded by telegraph cannot be received inasmuch as it has no signature attached to it." B. 236.

A petition was not received because there were not three signatures on the sheet containing the prayer. (Can. C.J., Vol. 68, p. 210.)

**335.** In computing the days from the opening of Parliament after which Petitions for Private Bills is to be presented, the day on which the election of the Speaker took place must not be included, as Parliament is formally opened only when its three branches—the Queen, the Senate and the Commons—are met together, and the House of Commons does not exist as a House until its Speaker is elected. (Can. C.J., Vol. 6, pp. 52 and 58.)

**336.** Aliens, not resident in Canada, have no right to petition the Parliament of the Dominion. (Can. C.J., Vol. 14, p. 58.)

Aliens not resident in this country have strictly no right to petition Parliament, but exceptions to this rule were made in 1878 and 1883 in favour of the Connecticut Mutual Life Insurance Company and certain persons of Portland, Maine, U.S.A. B. 236.

**337.** “Any forgery or fraud in the preparation of petitions, or in the signature attached, or the being privy to, or cognizant of, such forgery or fraud, is liable to be punished as a breach of privilege, and is considered and dealt with by the House as a matter of privilege. There have been frequent instances in which such irregularities have been discovered and punished by both Houses.” (M. 611.)

**338.** It is the duty of members to read petitions which are sent to them, before they are presented, lest any violation of the rules of the House should be apparent on the face of them; in which case it is their duty to offer them to the House. If the Speaker observes, or any member takes notice of, any irregularity, the member having charge of the petition does not bring it up, but returns it to the petitioners. If any irregularity escapes detection at this time but is discovered when the petition is further examined, no entry of its presentation appears in the Votes. In other cases, more formal notice is taken of the violation of the rules of the House, and the petitions are not received; or are ordered to be withdrawn, or are rejected. A member who has reason to believe that the signatures to a petition are genuine, is justified in presenting it, although doubts may have been raised as to their authenticity;

but in such cases the attention of the House should be directed to the circumstances. M. 616.

**339.** While a member may, if he desires, present a petition in his place in the House during routine proceedings and before the introduction of Bills, the general practice is to present petitions by filing the same with the Clerk of the House.

**340.** As the Speaker of the House of Commons may be called to give decisions on the regularity of petitions and as he does not take part in debates, he does not present petitions. When he is asked by his constituents to present one, he must avail himself of the services of a member on the floor. (See May, 614; B. 231.)

**341.** (1) A member who has not taken the oath or affirmation cannot present a petition. In 1881, objection was taken to the presentation of a petition by Mr. Bradlaugh and the Appeal Court decided, confirming the judgment of the High Court, that he was not qualified to sit. He was informed by the Speaker that he could not present a petition until he had taken the oath. (137 C.J., 295; Hans. 23s, p. 892.)

(2) A member may petition the House, but his petition should be presented by another member. Eng. Hans., Vol. 59, 3s., p. 476.

**342.** A member cannot be compelled to present a petition. In 1891, a person, in England, forwarded to two members of the British House of Commons a petition for presentation; and the petition was returned to the sender because it infringed the rules of the House. That person in consequence brought actions against the members and the Clerk who had acted in the matter, but the actions were dismissed on the ground that the causes of complaint were not cognizable by a court of law.

In a subsequent action, it was held that there is no right in a person desirous of petitioning the House to compel any member to present his petition and that no action will lie against a member for refusing to do so. (*Chaffers v. Goldsmid*, 1894, 1 Q.B., p. 186.)

**343.** Whilst a member has clearly a right to ask that a petition be read, it is a privilege, like many others, subject to the approval of the House itself. In case of opposition, the Speaker will put a motion formally to the House.

**344.** When the peculiar arguments and facts or general importance of a petition require it, it is ordered to be printed for the information of members, and there have been instances of their being printed in the Votes and Proceedings, a motion to that effect being duly made and agreed to.

**345.** A petition may not allude to debates in either House of Parliament or to intended motions if merely announced, but when notices have been formally given and printed on the notice paper, petitions referring to them are received. (M. 613.)

**346.** (1) In case of urgency, a petition may be immediately considered, but the grievance must be such as to require speedy and urgent remedy.

(2) Petitions affecting the House will at once be taken into consideration in accordance with parliamentary usage in all cases of privilege.

**347.** A petition setting forth that the return of a member of the House is void and praying that the petitioner be declared duly elected cannot be received, as Parliament has vested in the Courts exclusive jurisdiction over matters relating to the election of its members. (Can. C.J., Vol. 63, p. 292.) (Can. C.J., Vol. 15, pp. 199-200.)

**348.** A petition praying the House to take into its favourable consideration the desirability of recommending the ordering of a new trial, in the case of a person convicted of a criminal offence, cannot be received as it reflects improperly on the Courts of Justice. (Can. C.J., Vol. 64, p. 234.)

**349.** A petition praying for an exemption from an import duty is out of order, because involving a burden on public revenue, it cannot be received unless recommended by the Crown. (Can. C.J., Vol. 9, p. 260.)

A petition praying for the imposition of an import duty was ruled out of order, because it involved a public charge and could not be received unless recommended by the Crown. (Can. C.J., Vol. 9, p. 241.)

**350.** The House will refuse to receive any petition that directly asks for a grant of money out of the public revenues, unless such grant has first been recommended by the Crown. But the House does not reject petitions which ask simply for legislation or for "such measures as the House may think expedient to take", with respect to public works.

A petition involving an expenditure of money cannot be referred to a Select Committee. (Can. C.J., Vol. 2, p. 307.)

**351.** The following petitions were not received because they involve the expenditure of public money.

Petitions praying:

- (a) for the construction of a breakwater and the extension of a pier;
- (b) that a committee be appointed to allow the petitioner compensation on losses sustained through a decision of Provincial Arbitrators;
- (c) and for compensation for services rendered to the petitioners who had been severely wounded during the Fenian Invasion;
- (d) praying for the granting of a tract of land and for the remuneration of certain services cannot be received. (Can. C.J., Vol. 5, p. 51.)
- (e) praying the House to take into further consideration the claim of a province to a larger territory cannot be received as it involves an expenditure of public money. (Can. C.J., Vol. 44, p. 142.)
- (f) praying the Government to take over a railroad ruled out of order as involving an expenditure of money. (Can. C.J., Vol. 49, p. 403.)
- (g) asking that the Government assume the indebtedness of the Montreal Harbour Commissioners cannot be received as it involves an expenditure of public money. (Can. C.J., Vol. 44, p. 129-30.)
- (h) from veteran soldiers asking for homestead grants in compensation for military services cannot be received as it involves an expenditure of public money. (Can. C.J., Vol. 44, p. 162.)
- (i) praying that substantial recognition be made for military service cannot be received as they involve an expenditure of money. (Can. C.J., Vol. 47, pp. 181, 205.)
- (j) asking for a grant of specified amount of public money cannot be received. (Can. C.J., 1898, Vol. 33, p. 93.)
- (k) praying for the passing of an Act granting a subsidy cannot be received. (Can. C.J., Vol. 54, p. 143.)
- (l) asking for an appropriation of public money to reimburse the petitioners for losses sustained by the failure of a bank were ruled out of order. (Can. C.J., Vol. 49, p. 526.)

- (m) praying that the depth of water in a public canal be increased cannot be received, because it would involve the expenditure of public money. (Can. C.J., Vol. 9, p. 152.)
- (n) praying for the adoption of such measures as will render substantial assistance in the construction of some public works cannot be received. (Can. C.J., Vol. 5, p. 41.)
- (o) asking that certain obstructions to navigation be removed cannot be considered as praying for an expenditure of public moneys and must be received. (Can. C.J., Vol. 2, pp. 22-23.)



## CHAPTER XI

### PROCEEDINGS ON PUBLIC BILLS

INTRODUCTION.  
EXPLANATION OF PROVISIONS.  
IMPERFECT BILLS.  
MOTION FOR FIRST READING.  
PRINTED BEFORE SECOND READING.  
SEPARATE READINGS.  
URGENT CASES.  
CERTIFICATE AS TO READINGS.  
TWO READINGS BEFORE COMMITTEE.  
PROCEEDINGS IN COMMITTEE.  
PROCEEDINGS REPORTED.  
THIRD READING.

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### STANDING ORDERS

71. [20th December, 1867; 12th July, 1955]. (1) Every bill is introduced upon motion for leave, specifying the title of the bill; or upon motion to appoint a committee to prepare and bring it in.

(2) A motion for leave to introduce a bill shall be decided without debate or amendment, provided that any member moving for such leave may be permitted to give a succinct explanation of the provisions of the said bill.

72. [20th December, 1867]. No bill may be introduced either in blank or in an imperfect shape.

73. [20th December, 1867]. When any bill is presented by a member, in pursuance of an order of the House, or is brought from the Senate, the question, "That this bill be *now* read a first time", shall be decided without debate or amendment.

74. [20th December, 1867; 29th March, 1876]. All bills shall be printed before the second reading in the English and French languages.

75. [20th December, 1867]. Every bill shall receive three several readings, on different days, previously to being passed. On urgent or extraordinary occasions, a bill may be read twice or thrice, or advanced two or more stages in one day.

76. [20th December, 1867]. When a bill is read in the House, the Clerk shall certify upon it the readings and the time thereof. After it has passed, he shall certify the same, with the date, at the foot of the bill.

77. [20th December, 1867]. Every public bill shall be read twice in the House before committal or amendment.

78. [20th December, 1867; 12th July, 1955]. (1) In proceedings in committee of the whole House upon bills, the preamble is first postponed, and then every clause considered by the committee in its proper order; the preamble and title to be last considered.

(2) All amendments made in committee are reported by the Chairman to the House and the same shall be received and the motion for concurrence therein shall be disposed of forthwith before the bill is ordered for a third reading at the next sitting of the House. When a bill is reported without amendment, it is forthwith ordered to be read a third time at such time as may be appointed by the House.

ANNOTATIONS, COMMENTS AND  
PRECEDENTS

**352.** When it is intended by a Department to submit legislation to Parliament, the Deputy Minister will instruct the officer of the Department most cognizant of the matter to prepare the draft of a Bill and compile any necessary information relating thereto. When the draft is as nearly as possible completed for the purposes intended, the officer of the Department referred to should consult the Law Clerk of the House of Commons in regard to the proposed legislation, so that the resolution therefor, if required, shall set out the main propositions briefly and succinctly, and the Bill be revised and put into proper form for the House. For the expedition of the proceedings, it is always advisable to provide the Law Clerk with two copies of the Bill, so that the French Law Translators can proceed with their work at once. The Law Clerk has the Bill printed and sends fifteen copies to the Clerk of the Privy Council and four copies to the Minister in charge of the Bill.

**353.** After the Bill has been considered and approved by Council, the Clerk of the Privy Council will send a copy endorsed by the Prime Minister to the Clerk of the House of Commons with instructions to put it on the Order Paper, advising at the same time the Minister and Deputy Minister of the Department concerned of the action taken. Under this adopted procedure, no other official but the Clerk of the House of Commons can authorize any Bill or resolution to be put upon the Order Paper.

**354.** In cases of urgency, a Bill for consideration of Council may be typewritten and at least six copies should then be sent to the Clerk of the Privy Council, who upon approval by Council, will at once inform the Clerk of the House of Commons to that effect.

**355.** Bills involving expenditure of public money or taxation, and all measures involving a charge upon the people must be preceded by a resolution. (S.O. 61, House of Commons.) The recommendation of the Governor-General must be obtained before any resolution or Bill for the appropriation of any part of the public revenue or of any tax or impost is presented. (British North America Act, section 54.)

These resolutions are prepared by the Law Clerk of the House of Commons and sent to Council with the Bill, or as

soon thereafter as possible. He also applies for and obtains the recommendation of the Governor-General in every case where it is required. The Minister will see on the resolution to be moved a memo attached by the Clerk of the House as to the recommendation of the Governor-General having been obtained.

**356.** Where a Bill is not preceded by a resolution, but is on the Order Paper under "Introduction of Bills," the Minister in charge of the Bill, when called by Mr. Speaker, will move for the introduction and follow the established practice of making a brief explanation of the purposes of the Bill.

Where a resolution precedes the Bill it will appear on the Order Paper under "Government Notices of Motion," and when called by the Speaker, the Minister in charge will move: "That the House do go into Committee of the Whole at the next sitting of the House to consider the resolution regarding such and such a matter standing in his name". If this be a money resolution he will add: "His Excellency the Governor-General having been informed of the subject matter of the said proposed resolution, recommends it to the House."

**357.** Upon the following day, or at such subsequent time as is convenient, when "Government Orders" are called, the Minister may move the money resolution. This procedure is governed by S.O. 61 of the House of Commons.

The other phases of the procedure relative to the three readings and Committee stage of the Bill are sufficiently indicated on the Order Paper.

The Rules of the House of Commons as to the preparation and printing of Bills, adopted 14th June, 1923, must be followed by all Departments. They are as follows:

1. In the preparation of Bills amending existing enactments the amendments shall not ordinarily be made by clauses which add or leave out words or substitute words for others, but by clauses which re-enact the section, subsection or other minor division, as it is amended.
2. In the text of the Bill, on the left hand page, new matter shall be indicated by such typographical means as may best suit the varying circumstances of each case, such as brackets, italics, underlining, asterisks, etc. Opposite each clause, on the right hand page, the enactment amended thereby, or so much thereof as is essential,

shall be printed with the proposed changes to be made therein similarly indicated.

3. When a clause repeals an existing section, subsection or other minor division of a section, that section, subsection of division, or so much thereof as is essential, shall be printed opposite the clause.
4. A memorandum by the draftsman explaining briefly the reasons for each clause, shall be appended to the Bill, or distributed therewith. Whenever practicable the memorandum shall be printed on the right hand page of the Bill, in paragraphs opposite the clauses referred to and numbered correspondingly.
5. The above rules shall also as far as practicable apply to the reprinting of Bills."

**358.** The arrangement of a bill is of great political importance. The bill should be so framed that the main issues which its proposals raise are disentangled from subordinate issues, are placed in the forefront of the measure and are arranged in such a manner as to facilitate discussion in committee. Where the decision of an issue raised by one clause depends on the decision of an issue raised by another clause, the latter clause must come first. Care should also be taken that one clause does not raise incidentally an issue which can be more conveniently discussed in connection with a later clause. Subordinate matters should be dealt with in later parts of the Bill. Matters of detail should be relegated to schedules or left to be provided for by rules. Ilbert, 244-5.

**359.** Attention should be paid to the framing of marginal notes. A marginal note should be short and distinctive. It should be general and usually in a substantial form, and should describe but not attempt to summarize the contents of the clause to which it relates. If it cannot be made short without being vague, or distinctive without being long, the presumption is more clauses than one are required. A long and complex clause should be cut up into subsections. Ilbert, 246.

Under Standing Order 87, it is the duty of the law clerks of the House to put marginal notes upon all bills. They also number the clauses as this numbering is always liable to be altered at the last moment by the addition, omission or shifting of clauses and there is often no time to make the consequential alterations or references.

**360.** (1) As a rule a preamble is unnecessary in a public bill. Where the object is merely to describe briefly the reason for and the intended effect of the proposed legislation, that object can often be better obtained by prefixing a short explanatory memorandum to the Bill. Such a memorandum should state concisely the existing law, the reasons for amendment, and the effect of the proposed amendments. A local bill must always have a preamble, the recitals in which must be proved. And when a public bill resembles in character a local bill, a preamble will usually be necessary. Where, for instance, an enactment deals with a special set of facts, it will usually be convenient to state those facts in a preamble.

(2) A private bill is bound to have a preamble which is generally in the following form: "Whereas the persons hereinafter named have by their petition prayed that it be enacted as hereinafter set forth, and it is expedient to grant the prayer of the said petition." Therefore His Majesty by and with the advice, etc.

(3) A money bill, i.e., a bill of which the main object is to grant money, and which must therefore originate in a Committee of the House of Commons, has a special form of preamble, being "Most Gracious Sovereign, We, Your Majesty's most dutiful and loyal subjects, etc." (Ilbert, pp. 269-770.)

**361.** (1) In framing the title care must be taken to make it wide enough to cover all the provisions of the bill, and at the same time not so wide as to allow of the proposal of amendments which are irrelevant to the real substance of the bill. If the title is "An Act to Amend the Criminal Code," no other section of the Code can be amended than those mentioned in the bill unless modifications have become necessary in consequence of amendments made by the committee to the clauses of this amending bill. But it is better practice to limit the scope of the bill in the title by placing in parentheses words giving an exact description of the measure, such as: "An Act to amend the Criminal Code (Sweepstakes)." After this has been given second reading, amendments dealing with other matters than sweepstakes are not relevant.

(2) A bill may have two titles, one complete and one known as the *short title*. The latter, which serves as a convenient name for the law, is usually placed in the first clause.

Some of the constituent parts of a bill are essential, some optional. The title is an essential part; the preamble is not.

Preambles to public bills are only used in exceptional cases like the following: "Whereas a state of war exists between His Majesty and the German Emperor, the Emperor of Austria, King of Hungary, the Sultan of Turkey, and the King of the Bulgarians; and whereas it is necessary that measures be taken for the common defence and security and to this it is expedient that aid, as hereinafter provided, be rendered to Her Majesty." Therefore Her Majesty by and with the advice, etc.

(3) The "enacting clause" is an essential part of a bill. Under sec. 5 of the Interpretation Act, ch. 1, R.S.C., it must read as follows: "Her Majesty, by and with the advice and consent of the Senate and House of Commons, enacts as follows."

**362.** A public bill is introduced as a measure of public policy in which the whole community is interested, and originates on the motion of some member of the House in which the bill is introduced. Ilbert, *Legislative Methods and Forms*, 28.

The right of initiating legislation belongs to every member of Parliament. But the introduction of a bill touching the prerogatives or interests of the Crown requires the consent or recommendation of the Crown. Any member can introduce a bill, and no distinction is made in this respect between members of the executive government and other members of the House.

**363.** (1) Every member who wishes to introduce a bill must give forty-eight hours' notice (S.O. 41) which appears in the Votes and Proceedings and on the Orders of the Day.

When the notice has been given, the member in charge of the bill rises as soon as the order for the introduction of bills is called and moves formally for "leave to introduce a bill intituled, etc." He sends the Speaker a copy of the bill and the Speaker puts the question, "Is it the pleasure of the House that the honourable gentleman have leave to introduce his bill?"

(2) On the motion for leave to introduce a bill, a member who endeavoured to give detailed explanations was ruled out of order. "At this stage," said the Speaker, "it is not permissible to argue the bill. Discussion of the merits may take place on the motion for the second reading. All the honourable member is permitted to do at this time is to explain the provisions of the bill." (Can. Deb., 1932-33, p. 2016.)

(3) Only such succinct explanation is generally given as will enable the House to understand the purport of the bill. This is not the time for a lengthened debate on its merits. When an important measure is offered by a Minister or other member, this opportunity is frequently taken for a full exposition of its character and objects; but otherwise, debate should be avoided at this stage.

**364.** Leave to introduce a bill is not always granted as a matter of course. The House is free to refuse it. In April, 1931, Mr. McGovern, a left wing Labour Member of the British House of Commons, sought permission to introduce a bill abolishing the oath of allegiance to the Crown required of all Members of Parliament. "As a Socialist," he said, "I cannot take an oath of allegiance to a symbol which I am out to destroy." Permission for introduction of the bill was refused.

**365.** On the 7th March, 1932, the Canadian House of Commons gave Mr. Woodsworth leave to introduce a bill to amend the Criminal Code in relation to certain provisions respecting unlawful assemblies. Mr. Woodsworth explained the bill which, at that stage, had not been distributed to Members, and he moved its first reading. The House divided and the motion was lost, the vote being 52 to 70.

**366.** The introduction of a bill establishing additional staff in a branch of the Civil Service was stopped by the Speaker on the 21st February, 1936. The proposed bill provided for the abolition of the Bureau of Translations and the establishment in its stead of translators in each department. The transfer of the authority under which money had been appropriated for this service would have altered a condition imposed by the House on the expenditure. If any alteration is to be made with respect to the Department which will pay the salaries, it must be by the same process as the original resolution, i.e., by obtaining the Governor-General's recommendation and then referring the matter to the Committee of Supply. (Can. C.J., Vol. 74, pp. 61-62.)

**367.** When motion was made for leave to introduce a bill to amend the Bankruptcy Act so as to provide for a joint superintendent of bankruptcy who would be familiar with both official languages as well as with the civil laws of the Province of Quebec, the Speaker ruled the proposition out of order on the ground that it involved a charge upon the revenue and



that such legislation could only be introduced by a Minister of the Crown. (Can. Deb., March 16, 1933, p. 3099.)

**368.** On the 24th April, 1936, a member sought to introduce a bill to amend the Bank of Canada Act so as to allow the Bank to hold silver coin and bullion in conjunction with gold as a reserve against the note issue and deposit liabilities, and also to authorize the issue of certificates against the silver held in the reserve. The Speaker ruled the bill out of order on the ground that the Receiver General being entitled to share in the profits of the Bank, the fluctuations in the price of silver may cause serious losses and therefore curtail its profits with an accompanying reduction of the Receiver General's share therein and thereby cause a diminution of public revenue. The bill involved a charge on the Treasury and ought to be preceded by a resolution on motion of a minister with the recommendation of His Excellency the Governor-General. (Can. C.J., Vol. 74, p. 262.)

**369.** The introduction of a bill empowering the Government to purchase silver is not permitted. On the 10th June, 1935, a member, having given notice, asked leave to introduce a bill to amend the Bank of Canada Act by the addition of a clause providing that the minister may transfer to the bank silver held by him for the redemption of Dominion notes or hereafter purchased for the redemption of Dominion notes valued at the market price of the fine silver content. The Speaker declared that the motion to introduce the bill was out of order as it involved a charge on the Treasury. Whether silver was considered in the narrow sense of "money" or in the wider meaning of "property", its transfer could only be effected by the alienation of Crown property. (Can. C.J., Vol. 73, pp. 492-3.)

**370.** It is irregular for a private member to introduce a bill providing that no Post Office contract for an amount exceeding \$1,000 per year shall be awarded without the approval of the Governor-in-Council and that mail carriers shall be paid according to a fixed rate between 35 and 70 cents per mile per day unless otherwise authorized by the Governor-in-Council. Such a bill must be recommended by the Governor-General and originate in Committee of the Whole, as it involves the appropriation of public revenue. (Can. C.J., Vol. 64, pp. 104-105.)

The previous recommendation of the Crown is not required for the introduction of a Bill consolidating or amending revenue laws when the imposition of new burdens is not contemplated. (Can. C.J., Vol. 43.)

A Bill to create a new department of the government was ruled out of order because it involved public expenditure and was not introduced by a Minister of the Crown with the recommendation of the Governor General. (H. of C. Can. 1926-27. p. 807.)

**371.** It is within the right of any member to submit an amendment to the motion for leave when it appears on the Order Paper (S.O. 32). In 1884 such an amendment was made to the Independence of Parliament Amendment Act (Can. Deb., p. 624). After Sir John A. Macdonald had explained the Bill, Mr. Blake said: "I move an amendment to add the following words:—'and to impair the efficiency of the said Independence of Parliament Act.'" A vote was taken and the amendment was negatived on a division of 101 to 55. The main motion was then declared agreed to on the same division reversed.

**372.** A Bill from the Senate, certain causes of which would necessitate some public expenditure, is in order, if it is provided by a clause of said Bill that no such expenditure shall be made unless previously sanctioned by Parliament. (Can. C.J., Vol. 3, p. 155.)

It may be convenient to introduce in the Senate Bills involving public expenditure. In such a case, the money clauses are embodied in the Bill as presented in order to make it more intelligible and when the Senate goes into Committee on the Bills these clauses are ordered to be left out. They should be printed in italics in the engrossed Bill sent up to the Commons and are supposed to be blank. Those clauses must first be considered in a standing or special committee and then regularly referred to the Committee of the whole on the Bill (Sen. Minutes, 1879, pp. 144, 148; Com. J. 370-1; Sen. Min. 1882, p. 108; Com. J. 370-71) B. 493.

**373.** (1) The amendment of an Act of the same session is another aspect of the rule against the repetition of decided questions. Formerly it was expressly disallowed. In 1721 a prorogation for two days was resorted to in order to enable acts relating to the South Sea Company to be passed, contradictory to clauses contained in another act of the same session

(C.J. 1718-21, 640, 1721). Under an Act passed in 1850, (13 & 14 Vict. c. 21, s. 1) and by the Interpretation Act, 1889, s. 10, Bills amending or repeating Acts of the same session are now permissible in the United Kingdom House of Commons. See M., 15th Ed., p. 500.)

(2) There is no rule which restrains the presentation of two or more Bills relating to the same subject, and containing similar provisions. (Parl. Deb. 1806, 268, c. 1656; do, 1883, 278, c. 92.) But if a decision of the House has already been taken on one such Bill, for example, if the Bill has been given or refused a second reading, the other is not proceeded with if it contains substantially the same provisions, and such a Bill could not have been introduced on a motion for leave. But if a Bill is withdrawn, after having made progress, another Bill with the same objects may be proceeded with. On consideration of the Profiteering Bill, as amended, in session 1919, a member asked whether clause three of the Bill was in order, as it was substantially a repetition of a Bill which had been rejected on second reading; but the Speaker held that the House could revise a decision, provided that it was not asked to disagree with the same question. (M., 15th Ed., p. 500.)

**374.** A Bill intituled "An Act respecting the Department of National Revenue" was given its third reading in the House of Commons on the 10th March, 1927. It was subsequently passed by the Senate and it received Royal assent on the 31st March, 1927. On the 7th April, 1927, another Bill was introduced intituled: "An Act to amend an Act of the present session intituled: An Act respecting the Department of National Revenue." The Bill was given its three readings both in the House of Commons and in the Senate. It was assented to on the 14th April. The two Acts are included in the Statute for 1926-27, one bearing the title of "The Department of National Revenue Act", and, the other, "The Department of National Revenue Act Amendment Act, 1927."

On the 9th of April, 1918, the House of Commons passed a Bill entitled: "An Act to amend the Supreme Court Act" which was also passed in the Senate; it was given Royal assent on the 12th April. On the 15th May a message informed the Commons that the Senate had passed an Act to amend an Act of the present session entitled: "An Act to amend the Supreme Court Act." This bill went through all its stages in the House and it received Royal assent on the 24th May. Both Acts are

included in the Statute of 1918, one being Chapter 7 and intituled "An Act to amend the Supreme Court Act," and the other, being Chapter 44, intituled: "An Act to amend the Act of the present Session intituled An Act to amend the Supreme Court Act."

A similar procedure was followed in the session of 1919 as shown by the following entry in the Journals of June 6th: "The Bill No. 132 (Letter 03 of the Senate), intituled "An Act to amend an Act of the present Session intituled An Act to amend the Immigration Act" was read the first, and second time, considered in Committee of the Whole, reported without amendment, read the third time and passed."

**375.** (1) A Bill is in order when substantially different from another Bill on the same matter previously disposed of during the session. (Can. C.J., Vol. 5, p. 213.)

(2) An Act which has been passed by both Houses and given Royal assent may be amended during the same session by the introduction of a new bill; but no amendment can be made to a Bill which has passed the Commons or both Houses and has not received Royal assent.

(3) After a Bill has been given Royal assent it becomes an Act of Parliament and it can be amended during the session in which it was passed.

(4) A Bill to repeal a public Act is out of order when the House has already passed another Bill, during the same session, to amend the said Act. (Can. C.J., 1871, Vol. 4, p. 210.)

**376.** Bills are of three kinds, Public Bills, Private Bills and Bills of a mixed character styled "Hybrid Bills" which, though of a public character, affect private rights; and in their passage through Parliament are subjected to a special procedure. (M. 15th Ed., 471.) If the House finds that private rights may be affected, an order is made referring the Bill to the Examiners of Petitions for Private Bills, who may report that standing orders relating to Private Bills are applicable. The report should then be referred to the Standing Committee on Standing Orders which is empowered to report to the House whether such standing orders ought or ought not to be dispensed with. These two reports must be received before the second reading of the Bill can be proceeded with. Should the Examiner report that none of the standing orders relating to Private Bills are applicable the Bill proceeds on its course as an ordinary Public Bill. If

the Committee on Standing Orders reports that standing orders relative to Private Bills are applicable, have not been complied with and ought not to be dispensed with, the order of the day for the second reading is read and discharged, after which the Bill may be withdrawn.

The proceedings in a Committee on a Hybrid Bill are conducted in the same manner as in a Committee on a Private Bill. (M., 15th Ed., p. 491.)

**377.** (1) If a Committee on a Private Bill consider that the general expediency of a Hybrid Bill has not been established, they report the Bill to the House without amendment and make a special report explaining the circumstances of the case. A similar procedure is followed where the Committee do not consider it expedient to proceed further with the Bill.

(2) The proceedings in a select Committee on a Hybrid Bill are conducted in the same manner as in a Committee on a Private Bill. They differ from the proceedings in a select Committee on a Public Bill in that the committees have the same power over the Bill as a committee on a Private Bill, such as deciding the question whether the preamble is proved, or, if there be no preamble, whether the general expediency of the Bill is established before considering the clauses.

(3) In the United Kingdom Parliament Bills which are brought in by the Government (dealing with Crown property, or with national and other works in different localities, etc.), and which affect private interests, are introduced as Public Bills, and subsequently treated as Hybrid Bills.

(4) In Canada, a Bill containing provisions which are essentially feature of a Private Bill cannot be introduced as a Public Bill. (Can. C.J., 1875, Vol. 9, p. 213.)

**378.** When the House has agreed to the first reading of a Bill, the Speaker at once proceeds to the next stage by asking: "When shall the Bill be read a second time?" The answer is generally: "At the next sitting of the House." The Bill is thereupon placed on the order paper in its proper place for a second reading at a future time. This order passes almost invariably without a dissenting voice. It is purely formal and proposed with the object of placing the Bill on the agenda for a second reading when all discussion can more regularly and conveniently take place.

**379.** In the ordinary progress of a Bill there is an interval of at least one day between the first and the second readings, in accordance with Standing Order 75, which provides that "every Bill shall receive three several readings on different days previously to being passed." As the Bill is only printed and distributed after its first reading, members have not seen it when the day for its second reading is to be appointed and they are not asked to proceed with the second reading immediately. It is allowable, however, by leave of the House, on extraordinary occasions, to put Bills through more stages than one, and even through all their stages on the same day. The Interim Supply Bill is usually passed with extraordinary despatch. Bills introduced to implement the provisions of other Bills already passed, such as a Bill to amend the Salaries Act when a new ministry has been created, or to amend the Customs Tariff, after an exhaustive discussion in Committee, usually take two or more stages on the same day.

**380.** When the Bill comes up for a second reading in its proper course, one of the clerks at the table will read the order aloud, and the member in charge of the measure will then move its second reading. The member should take care to inform himself whether the bill is printed in the two languages, as that is absolutely necessary at this stage. The letters E. F. on the order paper will show whether that has been done. If any objection be made on that ground, it will prevent the Bill being taken up for its second reading on that day. But if the motion has been made and the debate allowed to proceed thereon, it will be too late then to raise an objection as to the printing in French. B. 508, Can. Deb., 1879, p. 1620.

The House may proceed with the second reading of a Bill when it has been printed in English and French though it appears on the order paper without the letters E. F. which are not inserted under any rule but simply for the guidance of members of the House. (Can. C.J., Vol. 53, pp. 640-1.)

**381.** The second reading of a Bill is that stage when it is proper to enter into a discussion and propose a motion relative to the principle of the measure. On the motion for the second reading, it is out of order to discuss the clauses of the Bill. The opponents of the Bill may vote against the question that the Bill "be now read a second time"; but this course is rarely adopted as it still remains to be decided on what day it shall be read a second time, or whether it shall be read at

all; and the Bill therefor is still before the House, and may afterwards be proceeded with. The ordinary practice is to move an amendment to the question by leaving out the word "now" and adding "six months" or any other term beyond the probable duration of the session.

**382.** It is also competent to a member who desires to place on record any special reasons for not agreeing to the second reading of a Bill, to move as an amendment to the question, a resolution declaratory of some principle adverse to, or differing from, the principles, policy, or provisions of the bill, or expressing opinions as to any circumstances connected with its introduction, or prosecution; or otherwise opposed to its progress; or seeking further information in relation to the Bill by Committees, Commissioners, the production of papers or other evidence or the opinion of Judges. M. 390.

**383.** When the order for the second reading has been read, a member may move, if he should not wish to proceed with the bill, that the order be discharged and the bill withdrawn. Or if the motion has been actually made for the second reading, it must first, with leave of the House, be withdrawn. It is irregular to go into the merits of a Bill on a motion that the order for a second reading be postponed or discharged. B. 510-11.

It may become necessary, before the second reading of a Bill, to make considerable changes in its provisions, which can only be accomplished, at this stage, by discharging the order for the second reading and withdrawing the Bill.

**384.** When the motion that the Bill be now read a second time is negatived, it is competent for a member immediately to move without notice: "That the said Bill be read a second time on — next." On this motion being agreed to, the Bill takes its place on the orders. The same practice obtains with respect to the Bill, at any previous or succeeding stage.

When the order for the second reading of a Bill has lapsed owing to the House being counted out, it may be revived on a subsequent day by a motion without notice. (Can. C.J., Vol. 53, p. 403.)

**385.** If, when the order of the day is read at the table, no motion be made for the second reading or other stage of a Bill, or for its postponement, it becomes a dropped order,

and does not appear again upon the notice paper, unless another day be appointed for its consideration.

**386.** On the second reading of a Bill, the House may decide to refer the subject matter thereof to a Commission although the bill could not be referred to a Committee of the House before its second reading. (The subject matter of a Bill and the Bill itself are two different things.) On the 17th April, 1934, the following amendment was moved to the second reading of a Bill to amend the Railway Act in respect of rates on grain: "That the Bill be not now read a second time but that the subject-matter thereof be referred to the Board of Railway Commissioners for Canada." This amendment was as much a declaration of policy as if it stated that the question of adjusting the railway rates on grain should be investigated by the Railway Board. The Speaker allowed the amendment, and an appeal was taken to the House which confirmed the decision by a vote of 78 to 44. (Can. C.J., pp. 254-5.)

(2) An amendment, urging the setting up of a select committee to consider the subject matter of a Bill, might be moved and carried, if the House were adverse to giving the Bill itself a second reading and so conceding its principle.

(3) The House cannot, under the guise of referring the subject matter to a committee, refer also certain provisions of the Bill itself. A certain proposed amendment contained these words: "That they (the committee) recommend other specific measures relating respectively to other matters provided for in the said Bill". This is going beyond a reference of the subject matter. It is an instruction to consider certain provisions of the Bill, which can only be done after the Bill has been read a second time and referred to a committee. The House cannot both refuse to give the second reading and refer some provisions of the Bill to a committee. It shall have to make its choice. The amendment was ruled out. (C.J. Vol. 90, p. 233.)

**387.** On the motion for the second reading of a Bill to amend the Canada Grain Act, and a proposed amendment that the subject matter thereof be referred to the Standing Committee on Agriculture and Colonization, the Speaker ruled the proposed amendment out of order on the ground that the Standing Committee on Agriculture and Colonization had not yet been appointed. On an appeal the ruling was sustained by 108 yeas to 41 nays. (C.J. Vol. 84, p. 55.)



**388.** On the motion for the second reading of a Bill respecting the Canadian National Railways and to provide for co-operation with the Canadian Pacific Railway System, and for other purposes, a member moved as an amendment "that the second reading of this Bill be postponed until this House declared that nothing therein shall be taken to authorize any amalgamation of the Canadian National Railway with the Canadian Pacific Railway; or to divest Parliament of its rights; or to take from the House of Commons its primary duty to control expenditures of public moneys and the taxes required to meet the same; and that the provisions of this Bill shall be read in the light of this declaration, and be construed so as to conform therewith, and that in so far as any of its provisions may be inconsistent therewith they shall be amended accordingly, and that the adoption of this amendment by this House shall constitute the declaration of its intention and purposes as set forth herein." The Speaker ruled this out for the reason that, instead of being a declaration of principle, it proposed a postponement of the second reading pending a definite declaration of the House; moreover, it did not purport to disagree with the principle of the Bill but it dealt with its provisions and anticipated amendments which may be moved in Committee. On an appeal to the House, the Speaker's decision was sustained by a vote of 88 to 35. (Can. C.J., Vol. 71, pp. 298-300.)

**389.** A motion opposing the second reading of a Bill must not anticipate amendments which may be moved in Committee. Alterations which may be affected by amending the clauses of the Bill cannot be moved on the second reading. On the 8th March, 1934, when the motion for the second reading of an Act to incorporate the Bank of Canada was under consideration, a member moved in amendment "that all the words after 'that' be struck out and the following substituted therefor: 'in the opinion of this House the Government should give further consideration to the matter of providing that the stock of the proposed Central Bank should be owned by the Government, and that the Governor and Directors of the said Bank should be appointed by the Governor-in-Council.'" The Speaker ruled the proposed amendment out of order because clauses of the Bill provided that the stock in the Bank be allotted to the public and that the Directors be appointed by the shareholders. The member could serve his purpose by moving amendments to

those clauses in Committee on the Bill. (Can. C.J., Vol. 72, pp. 156-7.)

**390.** An amendment to the second reading of a Bill which covers alleged defects that can be remedied when the measure is considered in Committee was ruled out by Speaker Glen on June 17, 1942, on the ground that it exceeded the limits prescribed by the rules and practice of both the United Kingdom and the Canadian House of Commons.

**391.** On the motion for the second reading of a Bill respecting the taking of a plebiscite, an amendment that the use of the powers conferred be restricted to the submission thereunder of one question, was ruled out by Speaker Glen who said: "The amendment moved does not challenge the principle of the Bill; in fact it agrees with the principle of the Bill for taking a plebiscite, but states that the powers sought should be restricted to the submission thereunder of only one question. The amendment also anticipates the Committee stage of the Bill. For these reasons the amendment was ruled out of order. (H. of C. Can., Feb. 26, 1942.)

**392.** (1) An amendment which has been negated in the Address in reply to the Speech from the Throne cannot be moved on the second reading of a Bill. (H. of C. Can. Deb., June 11, 1942.)

(2) On the motion for the second reading of a Bill, an amendment stating that in view of the policy of Parliament as declared in certain public Acts the House was not prepared to entertain a bill contravening them, has been allowed to be moved and carried. M. 392.

**393.** (1) An amendment purporting to approve the principle of a Bill and at the same time enunciating a declaration of policy cannot be moved to the second reading. It must oppose the principle of the Bill. When the Natural Products Marketing Bill was up for second reading, on the 24th April, 1934, a member moved in amendment, that "this House, while prepared to support legislation for assisting the orderly marketing of natural products, is unalterably opposed to the enactment of any compulsory measures which delegates to unnamed and undetermined individuals, groups or organizations, sweeping powers over the production and trade and commerce of the nation, etc." The Speaker ruled this amendment out of order

because it did not challenge the principle of the Bill and it anticipated the Committee stage. On an appeal, the House sustained this decision by a vote of 103 to 52. (Can. C.J., Vol. 72, pp. 271, 272, 273.)

(2) An amendment to the second reading of a Bill which accepts in part the principle of the Bill and suggests that it may be improved by provisions which can only be moved in Committee of the Whole is out of order. (H. of C. Can., June 11, 1942.)

(3) An amendment which is not adverse to the principle of a Bill but proposes that certain provisions be added to the Bill cannot be moved on the motion for second reading. (C.J., Vol. 71, pp. 297, 298, 299.)

**394.** (1) The principle or relevancy in an amendment governs every proposed resolution, which, on the second reading of a Bill, must not include in its scope other Bills then standing for consideration by the House. Nor may such an amendment deal with the provisions of the Bill upon which it is moved, nor anticipate amendments thereto which may be moved in Committee, not attach conditions to the second reading of the Bill.

(2) The adjourned debate on the second reading of a Bill cannot be set aside by a private member's substantive motion, because, in applying the anticipation rule, Bills must be given the right of way and take precedence over motions (Campion says that a Bill cannot be sidetracked by a Motion). (C.J., Vol. 74, pp. 67, 69.)

**395.** (1) To "commit" a Bill means to refer it to a committee, to be considered and reported.

(2) It is perfectly regular to refer a number of Bills at the same time to one Committee of the Whole, as is the case with Private Bills, which may consider all on the one day without the Chairman leaving the chair on each separate Bill." B. 519.

(3) In the Parliament of the United Kingdom, the committal of a Bill to a special committee is made without waiting until the committee be appointed. If the House thinks fit to refer a Bill to such a committee, the following motion is made: "That the Bill be committed to select committee." The members of the committee are selected afterwards.

This motion is not debatable under S.O. 32 unless it be an Order of the Day; but, upon the motion for the Third Reading of

a Bill, an amendment for the recommittal of the Bill may be debated.

**396.** The motion that a Bill be referred to the committee of the whole is often confused with the motion that "Mr. Speaker do now leave the Chair". Still they are two separate motions quite different from each other. In the first place the Speaker could not leave the Chair if the House had not previously decided that the Committee be constituted, which is done when the House decides to refer to it some Bill or proposed resolution. When that motion appears on the order of proceedings for the day it is debatable under paragraph (a) of Standing Order 32, which allows debate on motions not specifically made undebatable by any Standing Order. It may happen, when reference to the Committee of the Whole is moved, that some members may prefer that the reference be made to a Standing or Select Committee, in which case an amendment may be proposed to the effect that the words "Committee of the Whole" in the motion be left out and substituted by "Committee on Public Accounts" or any other Standing Committee or by "Select Committee consisting of, etc.". When that is carried, then and only then, the motion mentioned in standing order 53 namely, "That Mr. Speaker do now leave the Chair" can be put and must be decided without debate on amendment.

**397.** In Committee the bill is considered clause by clause. All opponents who have presented petitions against a Bill within the time allowed by the order of the House are entitled to be heard, provided they have a *locus standi* according to the rules and usages of Parliament. If the *locus standi* of a petitioner is objected to, it is decided by the committee. If an opponent fails to present a petition in due time he cannot be heard unless the order of the House is suspended in his favour by the House. The Chairman usually calls out the number of each clause, and reads the marginal note but he should give the clause at length when it is demanded *by the Committee*. Each clause is a distinct question and must be separately discussed. When a clause has been agreed to it is irregular to discuss it again on the consideration of another clause. Amendments must be made in the order of the lines of a clause. If the latter part of a clause is amended, it is not competent for a member to move to amend an earlier or antecedent part of the same clause.

But if an amendment to the latter part of a clause is withdrawn then it is competent to propose one to an earlier part.

**398.** Amendments may be made in every part of the Bill, whether in the preamble, the clauses or the schedules; clauses may be omitted, and new clauses and schedules added; though no amendment can be moved to the granting or enacting words of Bills for granting aids or supplies to the Crown, or to the enacting words of other Bills. Those words are part of the framework of the Bill and are never submitted to the committee. (M. 404.)

An amendment which would produce the same result as if the original motion were simply negatived is out of order. (Can. C.J., Vol. 57, p. 435.)

**399.** The object of S.O. 78 is to give members ample opportunity to discuss the bill in detail. The word "clause", therefore, is often taken to mean a distinct stipulation sufficient to allow the complete discussion of one separate matter. So when one long clause in a bill provides for the repeal of several sections of a statute and contains the new sections to be substituted therefor, the Chairman does not always call all these new sections together but he takes them up separately and restricts debate to each as it is being considered by the Committee.

**400.** The clauses of a Bill in committee of the whole must be considered in their proper order, i.e. beginning with clause 1 then taking up clause 2 and so on to the end of the Bill. A motion to postpone consideration of an early clause, in order to consider a later one, cannot be entertained unless the House has first decided on a motion made after due notice that the provision of Standing Order 78 be waived or suspended. Under S.O. 44 a motion may be made during a debate to postpone a question "to a day certain" but not a motion that consideration be not postponed, which is a negative proposition that cannot be entertained unless closure is in operation.

**401.** (1) The consideration of a clause may, on motion made, be postponed, but the motion may not be made if the clause has been amended. A postponed clause is, in the absence of an order to the contrary, considered after the other clauses of the Bill have been disposed of and before new clauses. if any, are brought up. M. 409.

(2) A proposal to postpone the only effective clause of a bill until the subordinate clauses have been considered has been ruled to be out of order. M. 409.

(3) The Chairman, in the case of an amendment offered to a Bill that was limited in scope to the repeal of a clause in a statute, ruled that the amendment was out of order, because its object was the continuance and the extension of the clause to be repealed. The chairman stated that, though the Committee had full power to amend, even to the extent of nullifying the provisions of the Bill, they could not insert a clause which reversed the principle which the Bill, as read a second time, sought to affirm. M. 405.

**402.** (1) In Committee all the clauses of the bill are considered before any new clauses are brought up and added to the bill. (M. 410.) But this practice is not rigorously followed and the Committee is generally guided by what is most convenient in each particular case.

(2) A new clause will not be entertained if it is beyond the scope of a bill, inconsistent with clauses agreed to by the Committee, or substantially the same as a clause previously negated. M. 411.

A new clause is out of order if it ought to be moved as an amendment to a clause of the bill or if it needs an instruction. M. 13; 411.

(3) It is irregular to propose to leave out all the words from "That" to the end of a clause in order to substitute other words, as such an amendment is in the nature of a new clause. B. 522.

**403.** When a member intends to move an important amendment in Committee to a Public Bill, he is not required, according to Canadian practice, to give notice of such amendment. It has been found expedient, however, in some cases, to give notice where the member desires to call special attention to his proposal.

**404.** An amendment may not be proposed to insert words at the commencement of a clause with a view to proposing an alternative scheme to that contained in the clause, or to leave out from the first word to the end of the clause, in order to substitute other words, or to effect a redrafting of the clause—such amendments being in the nature of a new clause. In such a case, the regular course is to negative the question,

that the clause stand part of the bill, and to bring up a new clause at the proper time. M. 407.

**405.** (1) If it should appear in the course of discussion that an amendment which has been allowed to be moved, (and has not yet been agreed to), is out of order, the chairman directs the Committee's attention to the fact and withdraws the amendment from the consideration of the Committee. M. 408.

(2) Schedules to a Bill are considered, as a rule, after new clauses are disposed of, and they are treated in the same measure as the clauses. When the schedules have been considered, new schedules are offered. If a schedule is disagreed to, another cannot be offered to supply its place, until the remaining schedules have been disposed of. M. 411.

**406.** Amendments are out of order if they are

- (a) irrelevant to the bill, or beyond its scope, governed by or dependent upon amendments already negatived;
- (b) inconsistent with or contradictory to the bill as agreed to by the Committee;
- (c) inconsistent with a decision which the Committee has given upon a former amendment;
- (d) offered at the wrong places in the bill;
- (e) tendered to the Committee in a spirit of mockery, vague or trifling.

**407.** An amendment to include in a bill a statute which has already ceased to have effect is out of order but an amendment may be moved to continue the Act which is still in force but would cease to have effect if steps were not taken to continue its existence. M. 406.

**408.** The Committee can so change the provisions of the bill that when it is reported to the House it is in substance a bill other than that which was referred. A Committee can negative every clause and substitute new clauses, *if relevant to the bill as read a second time*. If it should happen that alterations made by the Committee were so extensive that the bill was widely different from the one which had received second reading, the practice has been to withdraw the bill which had been so dealt with and to introduce another in the amended form on which the decision of the House could be obtained on second reading. (M. 412.)

**409.** The title may also be amended in Committee. M. 411-12. When the Committee have found it advisable to

alter the title of the bill they will report the fact to the House and the title will be amended *on the motion for the final passage*.

**410.** If the Committee cannot go through the whole bill at one sitting the Committee direct the Chairman to report progress and ask leave to sit again. When the Committee is about to rise, the Chairman says: "Shall I report progress and ask leave to sit again?" and, if there is no dissent, he immediately leaves the chair, the Speaker resumes the Speaker's chair and the Chairman reports as follows: "Mr. Speaker, the Committee of the whole are considering Bill No. x and have instructed me to report progress and ask leave to sit again." The Speaker repeats the report and adds: "When shall the Committee sit again? Next sitting of the House," or if the Committee is likely to take up the bill again on that day, he says: "At a later hour this day."

**411.** A motion to report progress having been negatived cannot be repeated during the pendency of the same question, being subject to the same rule as that observed in the House itself, which will not admit of a motion for the adjournment of the debate to be repeated without some intermediate proceeding. It has therefore been customary to alternate the motion for reporting progress with the motion "That the Chairman do now leave the Chair."

**412.** (1) The proceedings of a committee on a bill may be brought abruptly to a close by an order: "That the Chairman do now leave the Chair" or by a proof that a quorum is not present. The Chairman, in such cases, being without instruction from the Committee, makes no report to the House. A bill disposed of in this manner disappears from the order paper, though it can be revived by an order of the House.

(2) When a Committee on a bill is revived, its proceedings are resumed at the point at which they were interrupted, having been valid and duly recorded in the minutes until the Chairman was directed to leave the Chair. (M. 414.)

**413.** When the Bill has been fully considered, the Chairman puts a question: "Shall I report the bill, with (or without) amendment?" which being agreed to, he leaves the Chair without question put, and the Speaker resumes the Speaker's chair; upon which the Chairman reports from the Committee that they have considered Bill No. x an Act, etc., and instructed



him to report the same with (or without) amendment. If amendments are reported, motion is immediately made for second reading and concurrence which is not debatable unless deferred to a later sitting and placed on the order paper.

**414.** (1) The House is not supposed to be informed of the proceedings of a Committee on a bill until the bill has been reported; and discussion of the clauses, with the Speaker in the chair, when the bill is still before the Committee, is consequently irregular.

(2) When a bill or other matter (except Supply or Ways and Means) has been partly considered in Committee, and the Chairman has been directed to report progress and ask leave to sit again, and the House shall have ordered that the Committee shall sit again on a particular day, the Speaker shall, when the order for the Committee has been read, forthwith leave the Chair, without putting any question, and the House shall thereupon resolve itself into such Committee.

**415.** (1) When a bill comes up for third reading a member may move that it be not now read a third time but that it be referred back to the Committee of the Whole for the purpose of amending it in any particular. The motion for third reading is debatable under S.O. 32. Or the bill may then be ordered to be reprinted or committed to a Select Committee.

(2) Bills may be recommitted a number of times with or without limitation; in the latter case, the whole bill is opened to reconsideration, but in the former case the Committee can only consider the clause or amendments or instructions referred to them. When material amendments are desirable, the order for the third reading may be discharged, and the bill recommitted to introduce the amendments in Committee. (M. 418, 419.)

(3) A bill may be recommitted, amended in Committee, reported, considered on report and read a third time at the one sitting by simple order of the House.

A bill cannot be recommitted to a Committee of the Whole House when the question has been proposed that the Bill do pass. (Can. C.J., 1877, Vol. 2, p. 220.)

(4) On the third reading of a Bill, an amendment to refer back to the Committee of the Whole must not tend to change the principle approved on the second reading. C.J., Vol. 80, p. 331.

**416.** Although the evidence reported by a Special Committee on a bill is not printed in the French language, the debate and proceedings on the bill must go on if a decision to stop the same would practically mean that the Bill could not be proceeded with before the end of the session. (Can. C.J., Vol. 45, pp. 418-9.)

**417.** If the bill is reported without amendment, the Speaker puts the question: "When shall the bill be read a third time?" The House, at this stage, may decide by a majority vote either that the third reading will take place immediately or at some future day. If, to the Speaker's question, the answer comes "Now," he will at once put the third reading and the motion "that the bill do now pass and title be as on the order paper, (or that the title be . . . (putting the change if any))."

As soon as the bill is reported with amendment, the Speaker says: "When shall the report be received?" The answer is invariably "Now," and it is repeated by the Speaker. The Speaker formally puts the motion for concurrence, and if it is carried, he says: "When shall the bill be read a third time?" and the answer generally is "next sitting of the House."

**418.** The question for the third reading is put immediately after the report from the Committee of the Whole. All amendments which may be moved on a second reading of a bill may be moved on the third reading with the restriction that they cannot deal with any matter which is not contained in the bill. M. 421. On the second reading of a bill, an amendment may be moved expressing opinions as to any circumstances connected with its introduction or prosecution, or seeking further information in relation to the bill by committees or commissioners, the production of papers or other evidence, or the opinion of judges. This cannot be done on the third reading because it is not directly connected with any provision of the bill. The question for the third reading may be negatived, but as previously stated (in reference to the second reading) such a vote is not fatal to the bill.

When a motion is made "that the Bill be now read a third time", the same kind of amendments are permissible as on the second reading, i.e., amendments postponing it for three or six months. Red. 3, 98.

**419.** On the motion for the third reading of a Bill to incorporate the Bank of Canada, an amendment that the Bill

be referred back to the Committee of the Whole, with instruction that they have power to amend same so as to safeguard the sovereignty of Parliament over Canada's financial policy, was ruled out of order for the following reasons: "The amendment is irrelevant. The sovereignty of Parliament cannot be affected by the passage of a Bill in this House. The sovereignty of Parliament is created and defined by the British North America Act, Section 91 of which states that it shall be lawful for the Parliament of Canada to make laws in relation to all matters, except those assigned to Provincial Legislatures, and *inter alia* subjects enumerated therein, including banking, incorporation of banks and the issue of paper money. The sovereignty of Parliament can only be affected by an amendment to the British North America Act." (Can. C.J., Vol. 72, p. 552.)

**420.** On the third reading of a Bill to amend the Bank of Canada Act, an amendment was moved that the Bill be not now read a third time because it does not provide for complete government ownership of the Bank of Canada. This amendment involved the main subject matter dealt with in the Bill. The Speaker ruled it out of order on the ground that it was an expanded negative. Can. Deb., 17 June, 1936; p. 3801.

**421.** On the motion for Third Reading, an amendment declaring that "all duties, pecuniary penalties and other sources of revenue under the provisions of the Bill shall be paid into the Consolidated Revenue Fund of Canada in trust for the benefit of the Province wherein the same were collected and shall, at the end of every fiscal year, after deducting the cost of administration, be paid over to the Treasury Board", is out of order as it provides for the allotment of public revenues without recommendation of the Crown. Can. C.J., Vol. 26, p. 482.

**422.** On the third reading of a Bill authorizing the Government to float a loan for granting aid for National Defence and security, an amendment that the Bill be referred back to the Committee of the Whole with instructions to amend it so as to provide that, instead of borrowing money the Government meet this expenditure from receipts of taxation and the sale of interest free War Savings Certificates, was ruled out of order because it made the Bill partly a loan measure and partly a tax measure, which was not in accordance with the principle adopted on the second reading. C.J., 1941, Vol. 2, p. 1865; C.J., 1941, p. 215.

**423.** Debate and amendments on the different stages of the Appropriation Bill are governed by the same rule as other Bills. Amendments must be relevant to the Bill, and discussion thereon should not be allowed as much latitude as on the motion for the House to go into Committee of Supply or Ways and Means. In later years, however, the House seems to be satisfied with the detailed discussion which takes place in the Committee of Supply and the practice of raising a debate on this Bill has fallen into desuetude. But third reading is nevertheless debatable and may be debated by any member who desires to discuss the financial affairs of the Government at this stage of procedure, as was done by Mr. Foster (late Sir George) on the 13th June, 1898. (B. 442, Can. Deb. June 1898, p. 7858.)

**424.** "It is occasionally the custom to pass Bills through their different stages at one and the same sitting. That course, however, is never taken except in cases of extreme urgency, and with the general assent of the House." (Speaker Brand, 1880.) It is for the House to declare whether there is such urgency as to require the rapid passage of a measure; and whenever the sense of the House is to take more than one stage on the same day, the Speaker has permitted it to be done.

**425.** (1) Throughout all its stages and proceedings the Bill itself continues in the custody of the Clerk or other officers of the House, and no alteration whatever is permitted to be made in it, without the express authority of the House or a Committee, in the form of an amendment regularly put from the Chair, and recorded by the Clerks at the table or by the Chairman in Committee.

(2) Bills should be certified upon each of the three readings. The certification is usually made by the Clerk Assistant. Unless it is duly made, the Bill cannot be dealt with by the Clerks of Votes and Proceedings or of the Orders of the Day, nor can it be sent to the Senate. The original Bills, thus certified, form part of the records of the House.

(3) When a Bill has passed into law, it becomes an Act, and its clauses become sections. They should be referred to as sections in an amending Bill. Ilbert 246.

**426.** In order to give legal force to a Bill, or, in other words, make it a statutory enactment, the following legal and constitutional conditions are imperative:

- (a) That the Bill has passed through all its stages in both Houses and is consequently ready for the royal assent. If it should receive the assent of the Governor-General and be afterwards discovered not to have passed its proper stages in both Houses or be otherwise not in conformity with the constitutional procedure governing such cases, it is so much waste paper.
- (b) The next condition is that a Bill, having passed as above set forth, should receive the assent of the Governor-General as representing the Crown. The British North America Act, section 55, provides that the Governor-General shall either assent thereto in the King's name, or withhold the King's assent or reserve the Bill for the signification of the King's pleasure.

**427.** The constitutional usage, invariable in all such cases, requires that assent shall be given by the Sovereign or his representative in the presence of both Houses, either in person or by commission as frequently happens in England. In Canada, a deputy governor or administrator is appointed by commission to act for the Governor-General and to assent to Bills in the presence of the legislative body composed of the Senate and House of Commons. It is the assent in the presence of the two Houses that is legally and constitutionally necessary, and not, it should appear, the mere signing of a Bill, which may be done before or after the giving of this assent in the regular constitutional form.

**428.** The English law and usage are set forth in the preamble of an old Act (Hastell, Vol. 2, p. 339): "The law of this realm is and always has been, that the assent and consent of the King of this realm to any Act of Parliament ought to be given in his own presence, being personally present in the higher House of Parliament, or by his letters patent under his great seal and assigned with his hand, declared and ratified in his absence, to the lords spiritual and temporal, assembled together in the higher House."

**429.** In case the King does not attend in person but by proxy he signs a commission setting forth the Bills to which the assent can be given in the presence of the two Houses. He does not sign each Bill, but it is sufficient that he allows his assent to be given in the usual formal way in the House of Lords. It is this assent given in this way that is necessary to make a Bill a statutory enactment.

When the King comes in person to give his royal assent, the Clerk Assistant of the House of Lords waits upon his Majesty in the robing room, before he enters the House, reads a list of Bills and receives his command upon them. When the King is seated upon his throne, the Clerk of the Crown reads the titles and the Clerk of Parliament makes an obeisance to His Majesty, and then signifies His Majesty's assent with the usual formula. A gentle inclination, indicative of assent, is given by His Majesty who has, however, given his commands to the Clerk as already stated. A similar form of sanction is common to all the legislative bodies of Canada. In case His Majesty is not present in England, his assent is given by commission, and the Bills are not separately signed.

**430.** A defect in the commission, such as the non-citing of a Bill therein, or the fact that there was no record showing that the commissioner gave the King's royal assent to a Bill in the presence of the two Houses will invalidate a statute.

**431.** The signature of the Governor-General appears to be a purely formal act, which need not be necessarily given before the legal sanction in the Council Chamber. (Stephens' Commentaries II, 402.) In only one case has the signature of the Crown been first necessary, and that was to an act of grace or pardon which was read only once in each of the Houses without any amendment.

**432.** The date on which an Act comes in operation must be determined, by the fact of Royal assent having been given in the Senate Chamber in accordance with the usual forms. "That date of assent," to quote Hatsell, II, 351, "is to be ascertained by the record of the Journals of the Lords and may be certified by the Clerk of Parliaments." The official Gazette is also evidence in such a case.

**433.** If the Clerk of either House forgets to sign a Bill as passed, that fact does not invalidate a Bill which has passed all its constitutional stages, but he may rectify the error later. It is the fact that the Journals show that the Bill has passed which should govern. In the same way it seems it is the assent given in the constitutional form and place that should govern in a case of doubt.

CHAPTER XII  
**OFFER OF MONEY TO MEMBERS;  
BRIBERY IN ELECTIONS**

A HIGH CRIME.  
PROCEEDINGS IN CASE OF BRIBERY.

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**STANDING ORDERS**

79. [20th December, 1867; 29th March, 1876]. The offer of any money or other advantage to any member of this House, for the promoting of any matter whatsoever depending or to be transacted in Parliament, is a high crime and misdemeanour, and tends to the subversion of the constitution.

80. [20th December, 1867; 29th March, 1876]. If it shall appear that any person has been elected and returned a member of this House, or has endeavoured so to be, by bribery or any other corrupt practices, this House will proceed with the utmost severity against all such persons as shall have been wilfully concerned in such bribery or other corrupt practices.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**434.** Standing Order 79 is founded on a resolution passed by Parliament in England on the 2nd May, 1695. "In the spirit of this resolution, the offer of a bribe, in order to influence a member in any of the proceedings of the House, or of a committee, has been treated as a breach of privilege, being an insult not only to the member himself, but to the House." M. 93. Cush. 630.

The acceptance of a bribe by a member has ever, by the law of Parliament, been a grave offence, which has been visited by the severest punishments. In 1677, Mr. John Ashburnham was expelled for receiving £500 from the French merchants for business done in the house. In 1694, Sir John Trevor was declared guilty of a high crime and misdemeanour, in having, while Speaker of the House, received a gratuity of a thousand guineas from the City of London, after the passing of the Orphans Bill, and was expelled. In 1695, Mr. Guy, for taking a bribe of two hundred guineas, was committed to the Tower, and Mr. Hungerford was expelled, for receiving twenty guineas for his service as chairman of the committee on the Orphans Bill. M. 93-94.

The acceptance of fees by members for professional services connected with any proceedings or measures in Parliament, is also forbidden under the spirit of this rule—nor is it consistent with parliamentary or professional usage for a member to advise as paid counsel upon any private Bill before Parliament. B. 57, 58.

**435.** Standing Order 80 has nothing to do with the different laws which fully provide for the trial and punishment of corrupt practices at elections, but it reiterates the House's privilege to deal with offences of bribery and corruption after they have been proved before the competent courts. Where there are special reports concerning bribery or riots at elections, the conduct of returning officers; undue influence and intimidation; the alteration of the poll; the absence, misconduct or perjury of witnesses; defects or uncertainty in the law; the propriety of suspending the writ; or any other exceptional circumstances—the House may take such measures as are required by law or usage or as appear suitable to the occasion.



It is necessary in such cases to order a copy of the judgment delivered by the judge and the minutes of evidence to be laid before the House.

**436.** The following sections of the Canada Elections Act deal with the trial and punishment of corrupt practices at elections.

*Bribery, Treating, Undue Influence and Personation.*

65. Every person is guilty of the corrupt practice of bribery and of an indictable offence against this Act punishable as in this Act provided, who

- (a) directly or indirectly, by himself or by any other person on his behalf, gives, lends or agrees to give or lend, or offers or promises, or promises to procure or to endeavour to procure, any money or valuable consideration, to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce any elector to vote or refrain from voting, or corruptly does any such act on account of such elector having voted or refrained from voting at any election; or
- (b) directly or indirectly, by himself or by any other person on his behalf, gives or procures, or agrees to give or procure, or offers, promises, or promises to procure or to endeavour to procure, any office, place or employment, to or for any elector, or to or for any person on behalf of any elector, or to or for any other person, in order to induce such elector to vote or refrain from voting, or corruptly does any such act as aforesaid, on account of any elector having voted or refrained from voting at any election; or
- (c) directly or indirectly, by himself or any other person on his behalf, makes any such gift, loan, offer, promise, procurement or agreement as aforesaid, to or for any person, in order to induce such person to procure or endeavour to procure the return of any person to serve in the House of Commons, or the vote of any other elector at any election; or
- (d) upon or in consequence of any such gift, loan, offer, promise, procurement or agreement, procures or engages or promises or endeavours to procure the return of any person to serve in the House of Commons, or the vote of any elector at an election;

- (e) advances or pays, or causes to be paid, any money to or to the use of any other person, with the intent that such money or any part thereof shall be expended in bribery at any election, or who knowingly pays or causes to be paid any money to any person in discharge or repayment of any money wholly or in part expended in bribery at any election; or
- (f) directly or indirectly, by himself or by any other person on his behalf, on account of and as payment for voting or for his having voted or for illegally agreeing or having agreed to vote for any candidate at an election, or on account of and as payment for his having illegally assisted or agreed to assist any candidate at an election, applies to such candidate, or to his agent or agents, for the gift or loan of any money or valuable consideration, or for the promise of the gift or loan of any money or valuable consideration or for any office, place or employment, or for the promise of any office, place or employment; or
- (g) before or during any election, directly or indirectly by himself or by any other person on his behalf, receives, agrees or contracts for any money, gift, loan or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting at any election; or
- (h) after any election, directly or indirectly, by himself or by any other person in his behalf, receives any money or valuable consideration on account of such or any other person having voted or refrained from voting, or having induced any other person to vote or refrain from voting, at any election; or
- (i) in order to induce a person to allow himself to be nominated as a candidate, or to refrain from becoming a candidate or to withdraw, if he has become a candidate, gives or procures any office, place or employment, or agrees to give or procure, or offers or promises to procure, or to endeavour to procure any office, place or employment, for such person:

Provided always that the terms of this section shall not extend or be construed to extend to any money paid or agreed to be paid for or on account of any expenses legally payable and *bona fide* incurred at or concerning any election, and provided

that the actual personal expenses of any candidate and his expenses for professional services actually performed and for the fair cost of printing and advertising and for halls or rooms for the holding of meetings shall be held to be expenses legally payable.

66. Every person is guilty of the corrupt practice of treating and of an indictable offence against this Act punishable as in this Act provided, who, corruptly, by himself or by any other person, either before, during or after an election, directly or indirectly gives or provides, or causes to be given or provided, or is accessory to the giving or providing, or pays or engages to pay wholly or in part the expenses of giving or providing any meat, drink, refreshment or provision, or any money or ticket or other means or device to enable the procuring of any meat, drink, refreshment or provision, to or for any person for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at such election or on account of such person or any other person having voted or refrained from voting or being about to vote or refrain from voting at such election, and every elector who corruptly accepts or takes any such meat, drink, refreshment or provision or any such money or ticket, or who adopts such other means or device to enable the procuring of such meat, drink, refreshment or provision is guilty likewise.

67. (1) Every person is guilty of the corrupt practice of undue influence and of an indictable offence against this Act punishable as in this Act provided, who, directly or indirectly, by himself or by any other person on his behalf, makes use of, or threatens to make use of, any force, violence or restraint, or inflicts, or threatens the infliction, by himself or by or through any other person, of any temporal or spiritual injury, damage, harm or loss, or in any manner practises intimidation upon or against any person, in order to induce or compel such person to vote for any candidate, or to refrain from voting, or on account of such person having voted for any candidate or refrained from voting at any election or who, by abduction, duress, or any false or fraudulent pretence, device or contrivance, impedes, prevents or otherwise interferes with the free exercise of the franchise of any elector, or thereby compels or induces or prevails upon any elector either to vote for any candidate or to refrain from voting at any election.

(2) It shall be deemed a false pretence within the meaning of this section to represent to an elector, directly, or indirectly, that the ballot to be used, or the mode of voting at an election, is not secret.

68. Every person is guilty of the corrupt practice of personation, and of an indictable offence against this Act punishable as in this Act provided, who at an election:

- (a) applies for a ballot paper in the name of some other person, whether such name is that of a person living or dead, or of a fictitious person; or
- (b) having voted once at such election, applies at the same election for another ballot paper; or
- (c) aids, abets, counsels, procures or endeavours to procure the commission by any person of personation as herein defined.

69. Every one is guilty of a corrupt practice and of an indictable offence against this Act punishable as in this Act provided who, at an election, votes or attempts to vote knowing that he is for any reason disqualified, non-qualified or incompetent to vote thereat.

#### *Miscellaneous Offences.*

70. (1) Every election officer who omits to comply with the provisions of this Act shall be liable on summary conviction to a penalty of not less than fifty dollars and not more than two hundred dollars, and every election officer who refuses to comply with any of the provisions thereof, shall on summary conviction, be liable to a penalty of not less than two hundred dollars nor more than five hundred dollars, unless, in either case, such election officer establishes that, in so omitting or refusing compliance, he was acting in good faith, that his omission or refusal was reasonable, and that he had no intention to affect the result of the election or to permit any person to vote whom he did not *bona fide* believe was qualified to vote, or to prevent any person from voting whom he did not *bona fide* believe was not qualified to vote.

(2) It shall be deemed to be a non-compliance with the provisions of this Act to do or omit to do any act which results in the reception of a vote which should not have been cast, or in the non-reception of a vote which should have been cast.

(3) The person instituting any proceedings leading to the conviction of any election officer under this section shall be entitled to receive one-half of the penalty recovered, and it shall

be paid to him accordingly, unless such proceeding was instituted at the direction of the Chief Electoral Officer or unless the Chief Electoral Officer, at the request of the person by whom the proceeding was instituted has intervened in such proceeding and has met the whole or any part of the expense thereby incurred.

(4) When it is made to appear to the Chief Electoral Officer that any election officer has been guilty of any offence against this Act, it shall be his duty to make such inquiry as appears to be called for in the circumstances, and if it appears to him that proceedings for the punishment of the offence have been properly taken or should be taken and that his intervention would be in the public interest, to assist in carrying on such proceedings or to cause them to be taken and carried on and to incur such expense as it may be necessary to incur for such purposes.

(5) The Chief Electoral Officer shall have the like powers in the case of any offence which it is made to appear to him to have been committed by any person under section seventeen, section twenty-two, section twenty-nine, subsections two and six of section forty-nine, subsection twelve of section fifty, subsection seven of section fifty-two or section seventy-two of the said Act.

(6) For the purpose of any inquiry under the provisions of this section, the Chief Electoral Officer or any person nominated by him for the purpose of conducting any such inquiry, shall have the powers of a commissioner under Part II of the *Inquiries Act*, and any expense required to be incurred for the purpose of any inquiry under this section and of any proceedings assisted or caused to be taken by the Chief Electoral Officer by virtue thereof shall be payable by the Auditor General on the certificate of the Chief Electoral Officer out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada.

71. Every printed advertisement, handbill, placard, poster or dodger having reference to any election shall bear upon its face the name and address of its printer and publisher, and any person printing, publishing, distributing or posting up, or causing to be printed, published, distributed or posted up, any such document unless it bears upon its face such name and address

is guilty of an offence against this Act punishable on summary conviction as in this Act provided, and if he is a candidate or the official agent of a candidate is further guilty of an illegal practice.

72. (1) Any person unlawfully taking down, covering up, mutilating, defacing or altering any printed or written proclamation, notice, list of electors, or other document, authorized or required by this Act to be posted up, is guilty of an indictable offence against this Act and liable on indictment or on summary conviction to a fine not exceeding two thousand dollars and costs of prosecution, or to imprisonment for a term not exceeding two years with or without hard labour, or to both such fine and costs and such imprisonment, and if the fine and costs imposed are not paid forthwith (in case only a fine and costs are imposed) or are not paid before the expiration of the term of imprisonment imposed (in case imprisonment, as well as fine and costs, is imposed), to imprisonment, with or without hard labour, for such term or further term, as such fine and costs or either of them remain unpaid, not exceeding three months.

(2) A copy of the immediately preceding subsection shall be printed as a notice in large type upon every such printed document, or printed or written upon every such written document, or printed or written as a separate notice and posted up near to such document and so that such notice can be easily read.

73. Every person who before, during or after an election, directly or indirectly or by any means or device in attempted evasion of the following provisions.

- (a) hires or in whole or in part, pays for, or promises to pay for, or solicits for hire or use for payment of any horse, team, carriage, . . . , cart, wagon, automobile, sleigh, aeroplane, boat, vessel, or other means of conveyance; or
- (b) lest to hire or demands, receives, or promises to accept payment for the hire or use of any such means of conveyance;

for the purpose of conveying or providing for the conveyance of any elector or electors who may intend to vote to or from the poll or any polling station, or to or from the neighbourhood thereof, is guilty of an illegal practice, and of an offence against this Act punishable on summary conviction as in this Act pro-

vided; but the *bona fide* payment by the elector himself of the usual fare or a reasonable charge for his conveyance to or from the poll or polling station shall not be deemed a contravention of this section.

74. Every person who before, during or after an election, directly or indirectly or by means or device in attempted evasion of the following provisions,

- (a) pays or promises to pay in whole or in part the travelling or other expenses of any elector who may intend to vote, in going to or returning from the poll or any polling station, or going to or returning from the neighbourhood thereof; or
- (b) pays or promises to pay or receives or promises to accept payment, in whole or in part by reason of time spent, or for wages or other earnings or possibility thereof lost, by any elector who may intend to vote, in going to, being at or returning from the poll or any polling station, or going to, being at or returning from neighbourhood thereof;

is guilty of an illegal practice and of an offence against this Act punishable on summary conviction as in this Act provided.

75. Every person who, knowingly, in any case wherein an oath is by this Act authorized or directed to be taken, compels or attempts to compel, or induces or attempts to induce, any other person to take such oath falsely, is guilty of an illegal practice and of an offence against this Act punishable on summary conviction as in this Act provided.

76. Any person who resides without Canada and who, to secure the election of any candidate, canvasses for votes or in any way endeavours to induce electors to vote for any candidate at an election, or to refrain from voting, is guilty of an indictable offence against this Act punishable as in this Act provided.

77. Any person who, before or during any election, for the purpose of affecting the return of any candidate at such election, makes or publishes any false statement of fact in relation to the personal character or conduct of such candidate is guilty of an illegal practice and of an offence against this Act punishable on summary conviction as in this Act provided.

*Penalties and Procedure.*

78. (1) Any indictable offence against this Act may be prosecuted alternatively on indictment or by way of summary conviction.

(2) Any person who is guilty of any indictable offence against this Act is liable on indictment or on summary conviction to a fine not exceeding two thousand dollars and costs of prosecution or to imprisonment for a term not exceeding two years, with or without hard labour, or to both such fine and costs and such imprisonment, and if the fine and costs imposed, or are not forthwith, in case only a fine and costs are imposed, or are not paid before the expiration of the term of imprisonment imposed, in case imprisonment as well as fine and costs is imposed, to imprisonment with or without hard labour for such term or such further term, as such fine and costs or either of them remain unpaid, not exceeding three months.

79. Any person, who is guilty of any non-indictable offence against this Act which is punishable on summary conviction is liable to a fine not exceeding five hundred dollars and costs of prosecution or to imprisonment for a term not exceeding one year, with or without hard labour, or to both such fine and costs and such imprisonment, and if the fine and costs imposed are not paid forthwith, in case only a fine and costs are imposed, or are not paid before the expiration of the term of imprisonment imposed, in case imprisonment as well as fine and costs is imposed, to imprisonment with or without hard labour, for such term, or further term, as such fine and costs or either of them may remain unpaid, not exceeding three months.

80. Any person who during an election is guilty of an offence which is a corrupt practice or an illegal practice shall *ipso facto* become disqualified from voting and incompetent to vote at such election; and he shall also in addition to any other punishment for such offence by this or any other Act prescribed, forfeit to any person who in any competent court shall therefore sue.

(a) for every offence which is a corrupt practice, the sum of two hundred dollars and costs; and

(b) for every offence which is an illegal practice, the sum of one hundred dollars and costs.



81. Any person, who

- (a) in any report made to the Speaker of the House of Commons on an election petition, is named as having been found guilty of any offence which is a corrupt or illegal practice, is reported to have been heard on his own behalf and is declared to be a person who should be expressly disqualified as hereinafter provided:
- (b) is before any competent court convicted of having committed at an election any offence which is a corrupt practice or illegal practice, or ordered to pay any sum forfeited because of the commission of any corrupt practice or illegal practice; or
- (c) is, in any proceeding in which after notice of the charge he has had an opportunity of being heard, found guilty of any corrupt practice or of any illegal practice, or of any offence which is a corrupt practice or illegal practice;

shall, in addition to any other punishment for such offence by this or any other Act prescribed be, for a corrupt practice during the seven years or for an illegal practice during the five years, next after the date of his being so reported, convicted, ordered, or found guilty, incapable of being elected to or of sitting in the House of Commons or of voting at any election of a member of that House or of holding any office in the nomination of the Crown or of the Governor in Council.

82. No candidate shall on the trial of any election petition be reported by the trial judges to the Speaker of the House of Commons as having been found guilty of any corrupt practice or any illegal practice, or before any court be convicted of having committed at an election any offence which is a corrupt practice or an illegal practice or be ordered to pay any sum as forfeited because of the commission of any corrupt practice, or illegal practice, or in any other proceeding be found guilty of any corrupt practice or illegal practice or of any offence which is a corrupt practice or an illegal practice, unless the thing omitted or done the omission or doing of which constitutes the corrupt practice or illegal practice was omitted or done by

- (a) the candidate in person;
- (b) his official agent; or
- (c) some other agent of the candidate with the candidate's actual knowledge and consent:

Provided that nothing in this section shall prevent the avoidance pursuant to the provisions of the *Dominion Controverted Elections Act*, of any election in consequence of the commission of any corrupt practice or illegal practice.

83. No election shall on the trial of any election petition be voided because of any of the illegal practices referred to in sections twenty-two, thirty-eight, forty, forty-four, seventy-one, or seventy-seven of this Act unless the thing omitted or done be omission or doing of which constitutes the illegal practice was omitted or done by

- (a) the elected candidate in person;
- (b) his official agent; or
- (c) some other agent of such candidate with such candidate's actual knowledge and consent:

Provided that nothing in this section shall be deemed to impair or affect the provisions of the *Dominion Controverted Elections Act*.

84. No election shall be declared invalid by reason of non-compliance with the provisions of this Act as to limitations of time unless it appears to the tribunal having cognizance of the question that such non-compliance may have affected the result of the election, or as to the taking of the poll or the counting of the votes, or by reason of any want of qualification in the persons signing any nomination paper, or because of any error in the name, or omission of or error in the address or occupation of any candidate as stated on such nomination paper as received by a returning officer, or of any insufficiency in any publication of any proclamation, notice or other document, or any mistake in the use of the forms contained in this Act, if it appears to the tribunal having cognizance of the question that the election was conducted in accordance with the principles laid down in this Act, and that such non-compliance did not affect the result of the election.

85. If, at any time after a person has become disqualified under this Act, the witnesses, or any of them, on whose testimony such person has so become disqualified, are convicted of perjury with respect to such testimony, such person may move the court before which such conviction take place to order, and such court shall, upon being satisfied that such disqualification was procured by reason of such perjury, order that such disqualification shall therefore cease and determine; and it shall cease and determine accordingly.

86. (1) All penalties which are by this Act expressly made payable by way of forfeiture to any person aggrieved or to any person who sues therefor shall be recoverable or enforceable with full costs of suit by action of debt or information in any court of competent jurisdiction in the province in which the cause of action arises.

(2) In default of payment of the amount which the offender is condemned to pay, within the period fixed by the court, the offender shall be imprisoned in the common gaol of the county or district for any term less than two years, unless such penalty and costs are sooner paid.

(3) No action or information for the recovery of any such penalty by way of forfeiture shall be commenced unless the person suing therefor has given good and sufficient security, to the amount of fifty dollars, to indemnify the defendant for the costs occasioned by his defence, if the person suing is condemned to pay such costs.

(4) It shall be sufficient for the plaintiff, in any action or suit under this Act, to allege in his pleading or declaration that the defendant is indebted to him in the sum of money thereby demanded, and to allege the particular offence with respect to which the action or suit is brought, and that the defendant has acted contrary to this Act, without mentioning the writ of election or the return thereof.

(5) In any such civil action, suit or proceedings, instituted under this Act, the parties thereto, and the husbands or wives of such parties respectively, shall be competent and compellable to give evidence to the same extent and subject to the same exceptions as in other civil suits in the same province; but such evidence shall not thereafter be used in any indictment or criminal proceeding under this Act against the person giving it.

(6) In any action, suit or proceeding instituted only for the recovery under this Act of a penalty imposed by way of forfeiture, if the right of any person (in this section referred to as "the voter") to vote, or to vote at any particular place, at an election, is questioned or involved, the burden of proof of the voter being entitled to vote, or to vote at such particular place, shall be upon the voter or such other person as is the accused or defendant in such action, suit or proceeding, and not upon the person suing or instituting the proceeding.

87. No person shall be excused from answering any question put to him in any action, suit or other proceeding, in any court or before any judge, commissioner or other tribunal touching or concerning any election, or the conduct of any person thereat, or in relation thereto, on the ground of any privilege, except that no elector shall be obliged to state for who he voted at any election: Provided that no answer given by any person claiming to be excused on the ground of privilege shall be used in any criminal proceeding against such person other than an indictment for perjury, if the judge, commissioner or president of the tribunal gives to the witness a certificate that he claimed the right to be excused on such ground, and made full and true answers to the satisfaction of the judge, commissioner or tribunal.

88. (1) It shall not be necessary, on the trial of a suit or prosecution under this Act, to produce the writ of election or the return thereof, or the authority of the returning officer founded upon such writ of election, but general evidence of such facts shall be sufficient evidence.

(2) If the original election papers are required on any such trial of any suit or prosecution, the clerk or registrar of the court having cognizance of such proceedings may, at the instance of any of the parties thereto, notify the Chief Electoral Officer to cause them to be produced on or before the day fixed for the trial; and the Chief Electoral Officer shall cause such election papers to be deposited with such clerk or registrar in such manner as the court or judge shall order.

89. (1) Any court of criminal jurisdiction before which a prosecution is instituted for an offence against the provisions of this Act may order payment by the defendant to the prosecutor of such costs and expenses as appear to the court to have been reasonably incurred in and about the conduct of such prosecution.

(2) The court shall not make such order unless the prosecutor before or upon the finding of the indictment or the granting of the information enters into a recognizance with two sufficient sureties, in the sum of five hundred dollars, and to the satisfaction of the court, to conduct the prosecution with effect and do pay the defendant his costs in case he is acquitted.

(3) In case of an indictment or information by a private prosecutor for an offence against the provisions of this Act,

if judgment is given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the defendant by reason of such indictment or information, which costs shall be taxed by the proper officer of the court in which the judgment is given.

90. (1) In an indictment or prosecution for a corrupt practice or an illegal practice, and in any action or proceeding for a penalty or by way of forfeiture for a corrupt practice, or an illegal practice, it shall be sufficient to allege that the defendant was, at the election at or in connection with which the offence is intended to be alleged to have been committed, guilty of a corrupt practice or an illegal practice, described it by the name given to it by this Act, or otherwise, as the case requires.

(2) In any criminal or civil proceedings in relation to such offence the certificate of the returning officer shall be sufficient evidence of the due holding of the election and of any person named in such certificate having been a candidate thereat.

91. (1) Whenever it appears to the court or judge trying an election petition that any person has violated any of the provisions of this Act, for which violation such person is liable to a fine or penalty other than the fines or penalties imposed for any offence amounting to an indictable offence, such court or judge may order that such person may be summoned to appear before such court or judge, at the place, day and hour fixed in such summons for hearing the charge.

(2) If, on the day so fixed by the summons, the person summoned does not appear, he shall be condemned, on the evidence already adduced on the trial of the election petition, to pay such fine or penalty as he is liable to pay for such violation, and in default of paying such fine or penalty to the imprisonment prescribed in such case by this Act.

(3) If, on the day so fixed, the person summoned does appear, the court or judge, after hearing such person and such evidence as is adduced, shall give such judgment as to law and justice appertains.

(4) All fines and penalties recovered under the next three preceding subsections shall belong to His Majesty for the public uses of Canada, but no fine or penalty shall be imposed thereunder if it appears to the court or judge that the person has already been sued to judgment or acquitted with respect to the same offence, nor shall any such fine or penalty be imposed

for any offence proved only by the evidence or admission of the person committing it.

92. Notwithstanding anything in the *Criminal Code*, every prosecution for an offence against this Act, and every action suit or proceeding for any pecuniary penalty given by this Act to any person aggrieved or to any person suing therefor, shall, when commenced, be proceeded with and carried on without wilful delay, and shall be commenced within the space of one year next after the day when the offence was committed or when such action, suit or proceeding might first have been brought or taken and not afterwards, unless the prosecution, action, suit or proceeding is prevented by the withdrawal or absconding of the defendant out of the jurisdiction of the court, in which case such prosecution, action, suit or proceeding may be commenced within one year after his return, or in case of a charge against a returning officer pursuant to section fifty-seven for wilful delay, neglect or refusal to return a candidate as elected, in which case such prosecution, suit or proceeding shall be commenced within six months after the conclusion of the trial of the petition relating to such action.

93. Notwithstanding anything in the *Criminal Code*, no indictment for an offence which is a corrupt practice or an illegal practice shall be tried before any court of quarter sessions or general sessions of the peace.

The following sections of the *Dominion Controverted Elections Act* (R.S.C. 1927, ch. 50) deal with the judges' report and the Speaker's duty with respect to punishment of corrupt practices at elections:

#### *Judges' Report*

57. At the conclusion of the trial, the trial judges shall determine whether the member whose election or return is complained of or any and what other person was duly returned or elected, or whether the election was void, and other matters arising out of the petition, and requiring their determination, and shall, except in the case of appeal hereinafter mentioned, within four days after the expiration of eight days from the day on which they shall so have given their decision, certify in writing such determination to the Speaker, appending thereto a copy of the notes of evidence.

(2) The determination thus certified shall be final to all intents and purposes. R.S., c. 7, s. 58.

58. Every certificate and every report sent to the Speaker in pursuance of this Act shall be under the hands of both judges.

(2) If the trial judges differ as to whether the member whose return or election is complained of was duly returned or elected, they shall certify that difference, and the member shall be deemed duly elected or returned.

(3) If the trial judges determine that such member was not duly elected or returned, but differ as to the rest of the determination, they shall certify that difference, and the election shall be deemed to be void.

(4) If the trial judges differ as to the subject of a report to the Speaker, they shall certify that difference and make no report on the subject on which they so differ. R.S., c. 7, s. 59.

59. When any change is made in an election petition of any corrupt or illegal practice having been committed at the election to which the petition relates, the trial judges shall, in addition to such certificate, and at the same time, report in writing to the Speaker,

- (a) whether any corrupt or illegal practice has or has not been proved to have been committed by or with the knowledge and consent of any candidate at such election, stating the name of such candidate, and the nature of such corrupt or illegal practice;
- (b) the names of any persons who have been proved at the trial to have been guilty of any corrupt or illegal practice;
- (c) whether corrupt or illegal practices have, or whether there is reason to believe that corrupt or illegal practices have, extensively prevailed at the election to which the petition relates;
- (d) whether they are of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt or illegal practices have extensively prevailed is desirable. R.S., c. 7, s. 60; 1921, c. 7, s. 9.

60. The trial judges may, at the same time, make a special report to the Speaker as to any matters arising in the course of the trial, an account of which ought, in their judgment, to be submitted to the House of Commons. R.S., c. 7, s. 61.

61. Except where otherwise expressly provided by this Act, any order, act, application or thing for the purpose of this Act may be made or done by, to or before a single judge. R.S., c. 7, s. 62.

### *Special Case*

62. When, upon the application of any party to an election petition duly made to the trial judges assigned to hear the said petition, it appears to such judges that the case raised by the petition can be conveniently stated as a special case, such trial judges may direct the same to be so stated.

(2) Any such special case shall, as far as possible, be heard before such judges, who shall thereupon give such judgment as to justice appertains; and in case the decision is final, the trial judges shall certify to the Speaker their decision on such special case, in the manner and within the time hereinbefore provided in cases of election trials. R.S., c. 7, s. 63.

### *Appeals*

63. An appeal shall only lie after the final decision of the court after the trial of an election petition and if any party is dissatisfied with such decision, an appeal shall lie to the Supreme Court of Canada from the judgment or decision on any question law or of fact of the judges who tried the petition. 1915, c. 13, s. 13.

64. The party so desiring to appeal shall, within eight days from the day on which the decision appealed from was given, deposit with the clerk of the court with whom the petition was lodged or with the proper officer for receiving moneys paid into court, at the place where the trial of the petition took place, if in the province of Quebec, and at the office of the clerk of the court in which the petition was presented, if in any other province, the sum of three hundred dollars, as security for costs, and also a further sum of ten dollars as a fee for making up and transmitting the record to the Supreme Court of Canada; and such deposit may be made in legal tender or in the bills of any chartered bank doing business in Canada, and no other security shall be necessary. 1915, c. 13, s. 13.

65. Upon such deposit being so made, the said clerk or other proper officer shall make up and transmit the record of the case to the Registrar of the Supreme Court of Canada, who shall set down the said appeal for hearing by the Su-



preme Court of Canada at the nearest convenient time, and according to the rules of the Supreme Court of Canada in that behalf. R.S., c. 7, s. 66.

66. The party so appealing shall, within three days after the said appeal has been so set down as aforesaid or within such other time as the court or trial judges, by whom such decision appealed from was given, allow, give to the other parties to the said petition affected by such appeal, or the respective attorneys, solicitors or agents by whom such parties were represented at the trial of the petition, notice in writing of such appeal having been so set down for hearing as aforesaid and may in such notice, if he so desires, limit the subject of the said appeal to any special and defined question or questions.

(2) The appeal shall thereupon be heard and determined by the Supreme Court of Canada, which shall produce such judgment upon questions of law or of fact, or both, as in the opinion of such Court ought to have been given by the court or the trial judges whose decision is appealed from; and the Supreme Court of Canada may make such order as to the money deposited as aforesaid, and as to the costs of the appeal as it thinks just; and, in case it appears to the Court that any evidence duly tendered at the trial was improperly rejected, the Court may cause the witness to be examined before the Court or a judge thereof, or upon commission. R.S., c. 7, s. 67; 1915, c. 13, s. 13.

67. If an appeal, as provided by this Act, is made to the Supreme Court of Canada from the judgment or decision of the trial judges, they shall make to the Supreme Court of Canada the report and certificate with respect to corrupt or illegal practices hereinbefore directed to be made, and may make the special report as to any matters arising in the course of the trial as hereinbefore provided, and the same, together with the decision and findings, if any, with respect to corrupt or illegal practices by agents hereinbefore provided for, shall form a part of the record in the said matter to be transmitted to the Supreme Court of Canada on such appeal. R.S., c. 7, s. 68; 1921, c. 7, s. 9.

68. The Registrar shall certify to the Speaker the judgment and decision of the Supreme Court of Canada, confirming, charging or annulling any decision, report or finding of the trial judges upon the several questions of law as well as of

fact upon which the appeal was made, and therein shall certify as to the matters and things as to which the trial judges would have been required to report to the Speaker, whether they are confirmed, annulled or changed, or left unaffected by such decision of the Supreme Court of Canada; and such decision shall be final. R.S., c. 7, s. 69.

*Proceedings of Speaker upon Judges' Report*

69. The Speaker shall, at the earliest practicable moment after he receives the certificates and report or reports, if any, of the trial judges or the Supreme Court of Canada, give the necessary directions, and adopt all the proceedings necessary for confirming or altering the return, or, except as hereinafter mentioned, for the issuing of a writ for a new election, for which purpose the Speaker may address his warrant, under his hand and seal, to the Chief Electoral Officer, or for otherwise carrying the determination into execution, as circumstances require. R.S., c. 7, s. 70; 1921, c. 7, s. 2.

70. The Speaker shall, without delay, communicate to the House of Commons the determination, report and certificate of the trial judges or of the Supreme Court of Canada and his own proceedings thereon; and, when the trial judges or the Supreme Court of Canada make a special report, the House of Commons may make such order in respect of such special report as they think proper. R.S., c. 7, s. 71.

71. When the trial judges or the Supreme Court of Canada in their report on the trial of an election petition under this Act, state that corrupt or illegal practices have, or that there is reason to believe that corrupt or illegal practices have extensively prevailed at the election to which the petition relates, or that they are of opinion that the inquiry into the circumstances of the election has been rendered incomplete by the action of any of the parties to the petition, and that further inquiry as to whether corrupt or illegal practices have extensively prevailed is desirable, no new writ shall issue for a new election in such case except by order of the House of Commons. R.S., c. 7, s. 72; 1921, c. 7, s. 9.

CHAPTER XIII  
INTERNAL ECONOMY

REPORTS LAID ON THE TABLE.

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STANDING ORDER

81. (10th July, 1906.) Mr. Speaker shall, within ten days after the opening of each session, lay upon the Table of the House a report of the proceedings for the preceding year of the Commissioners of Internal Economy.

### ANNOTATIONS, COMMENTS AND PRECEDENTS

**437.** The Speaker and four members of the Privy Council, who are also members of the House, are, by the Governor-in-Council, appointed Commissioners of Internal Economy of the House of Commons. Their names must be communicated by message from the Governor to the House in the first week of each session of Parliament. The powers of the Speaker for the purposes of this Act are extended to last until the election of his successor by the next Parliament. In the event of the death, disability or absence from Canada of the Speaker, during any dissolution or propagation of Parliament, any three of the Commissioners may carry the provisions of the Act. The Clerk and Sergeant-at-Arms shall make estimates of the sums required for the service of the House and shall submit the same to the Speaker who may approve or alter them and who shall transmit them to the Minister of Finance for submission to Council. They shall subsequently be laid before the House with the other estimates for the year. All sums of money voted by Parliament shall be subject to the order of the Commissioners, or any three of them, of whom the Speaker shall be one.

**438.** Questions dealing with salaries paid the staff or with details about the management of the House's affairs should not be addressed to the Speaker from the floor of the House when he is in the Chair. He is bound to give any information sought by Members when the Legislation estimates are under consideration in Committee of Supply. Members who wish to be informed about the expenditures under the control of the control of the House may either write to the Speaker or place on the Order Paper questions addressed to the Commission of Internal Economy. The answers will be prepared and tabled by the Clerk of the House who is the official secretary of the Commission of Internal Economy.

CHAPTER XIV  
**EFFECT OF PROROGATION ON  
ORDERS FOR RETURNS**

PROROGATION NOT TO NULLIFY ORDER OR ADDRESS FOR RETURNS.

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**STANDING ORDER**

82. (20th December, 1867; 10th July, 1906.) A prorogation of the House shall not have the effect of nullifying an order or address of the House for returns or papers, but all papers and returns ordered at one session of the House, if not complied with during the following session, without renewal of the order.

## ANNOTATIONS, COMMENTS AND PRECEDENTS

**439.** Returns are furnished by the Departments of the Government with as much speed as is practicable, but it often happens that a large number cannot be prepared in time to be laid before the House during the session in which they are ordered.

Returns have sometimes been brought down several years after having been ordered. Can. Com. J. 1877, p. 284.

When Parliament is prorogued before a return is presented, it is not the modern practice to renew the address or order in the following session, but the order is held to have force from one session to another until it is complied with. M. 623.

Returns have been ordered also "to be prepared in order to be laid before the House in the next session." M. 623.

The order for an address made by a former Parliament has been read, and the House being informed that certain persons had not made the return, they were ordered forthwith to make a return to the House. M. 624.

**440.** Prorogation is sometimes superseded by dissolution as happened on the 2nd of July, 1926, and on the 25th of January, 1940. A Parliament is dissolved either by an exercise of the prerogative of the Crown or by the efflux of time. The duration of a Parliament in Canada is limited by section 50 of the British North America Act which reads: "Every House of Commons shall continue for five years from the day of the return of the Writs for choosing the House (subject to be sooner dissolved by the Governor-General), and no longer."

The dissolution of Parliament may be effected by a Proclamation based on an order in council passed, as in 1926, in the following terms:

"The Committee of the Privy Council have had under consideration the expediency of dissolving the House of Commons, and of summoning a new Parliament.

"The Committee therefore recommend that the present Parliament be dissolved, as of the 2nd of July, 1926, and that a new Parliament be called together, and that a Proclamation, bearing date the 2nd of July, 1926, do issue, dissolving the present Parliament.

"The Committee submit the foregoing for your Excellency's approval."

The Proclamation dissolving Parliament will read as follows:

WHEREAS We have thought fit, by and with the advice and consent of Our Privy Council for Canada, to DISSOLVE the present Parliament of Canada.

Now Know Ye, that We do for that end publish this Our Royal Proclamation, and do hereby DISSOLVE the said Parliament of Canada accordingly; and the Senators and the Members of the House of Commons are discharged from their meeting and attendance forthwith.

In Testimony Whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto affixed. WITNESS: Our Right Trusty and Well-beloved (titles and name of Governor-General).

AT OUR GOVERNMENT HOUSE, in Our City of Ottawa, in Our Dominion, this second day of July, in the year of Our Lord one thousand nine hundred and twenty-six and in the seventeenth year of Our Reign.

By Command

It will be seen from the above that although the Governor-General dissolves Parliament by an exercise of the prerogative of the Crown, he only does so after having taken the advice of the cabinet which, however, he is not bound to accept. There does not seem to be anything left of His Excellency's powers in the administration of Canadian public affairs. He may refuse to sign the Proclamation but he could not to-day dissolve Parliament on his own initiative.

Parliament is not dissolved by the death of the King. Section 2 of the Senate and House of Commons Act reads as follows: "No Parliament of Canada shall determine or be dissolved by the demise of the Crown, but such Parliament shall continue, and may meet, convene and sit, proceed and act, notwithstanding the demise of the Crown, in the same manner as if such demise had not happened." Subsection 3 says: "Nothing in the next preceding section shall alter or abridge the power of the Crown, to prorogue or dissolve the Parliament of Canada."

**441.** The Speaker and Deputy Speaker remain in office after dissolution. Even a change of government will not affect their status as parliamentary officers with official duties to perform. They are also entitled to their full emoluments. The Deputy Minister of Justice, in a letter to the Clerk of the House of Commons on the 8th of July, 1930, stated the case as follows:

Ottawa, July 8, 1930.

Dear Sir:—

Referring to your letter of the 16th ultimo, the questions which you submit for ruling and my answers thereto are as follows:

1. Is Honourable Mr. Lemieux still the head of the House of Commons Department in the same sense as he was prior to dissolution, and can he still continue to administer the affairs of the House of Commons?

Answer: I am of the opinion that the Honourable Mr. Lemieux is still the head of the House of Commons Department for all the purposes of the provisions of sections 16 to 22, both inclusive, of the House of Commons Act, R.S.C. 1927, chap. 145. Section 21 vests in the Speaker certain powers in relation to the suspension and dismissal of any member of the staff of the House of Commons. Section 7 of the Civil Service Act, to which you refer, does not appear to form one of the group of provisions which by sec. 61 is applicable to the permanent officers, clerks and employees of the House of Commons. Standing Order 82 of the Standing Orders and Rules of the House of Commons embodies an analagous provision in regard to the direction and control of the officers and clerks of the House. This Order provides that, "The Clerk of the House . . . has the direction and control over all the officers and clerks employed in the office, subject to such orders as he may, from time to time, receive from Mr. Speaker or the House." While the Standing Orders and Rules are silent as to the authority of the Speaker under S.O. 82, upon and after a dissolution of Parliament, I think it may reasonably be inferred from the provisions of sections 15 to 22 inclusive of the House of Commons Act, more particularly sections 21 and 22, that he is intended to exercise such authority until a Speaker is chosen by the new Parliament.

2. Is Honourable Mr. Lemieux entitled to any perquisite or other remuneration than his salary and residence allowance?

Answer: I apprehend that provision is made for these perquisites in the annual appropriations for the salaries, allowances and contingent expenses of the House and of the several officers and clerks thereof. The moneys required to provide these perquisites are voted, as in the case of the Speaker's salary, for the period of the fiscal year, and the Speaker's right to enjoy them is not limited to the period during which Parliament is in session; and in practice, I understand, he has re-



ceived them regardless of whether Parliament was in session or not. In the circumstances, I can make no distinction in principle between the Speaker's salary and the perquisites attached to his office; if he is entitled, notwithstanding the dissolution of Parliament, to be paid the salary attached to the office of Speaker until a Speaker is chosen by the new Parliament or until he takes his seat in the Senate—and that is conceded—then it seems to me to follow that he is entitled, on the same grounds, to benefit of the perquisites, subject to the same limitation.

3. Can temporary appointments be made during dissolution either by Mr. Speaker, the Clerk or the Sergeant-at-Arms?

I am disposed to think that the Clerk, under Standing Order 85, and the Sergeant-at-Arms, under sec. 4 of Standing Order 87, probably have authority to engage temporary employees during a dissolution of Parliament if the business or service of the House so requires. Mr. Speaker does not, however, appear to be vested under any of the Standing Orders with authority to engage temporary employees during a dissolution of Parliament.

Yours faithfully,

W. STUART EDWARDS,  
D. M. of J.

**442.** The Deputy Speaker's case is dealt with in the following letter addressed to the Deputy Minister of Finance:

20th July 1922.

Dear Sir:—

I understand that the Parliamentary Counsel has advised that the office of the Deputy Speaker ceased upon the dissolution of Parliament and that there is therefore no authority for payment of his salary after the date of dissolution. It seems to me, however, that section 5 of the Speaker of the House of Commons' Act, section 12 of the House of Commons' Act, and section 31 of the last mentioned Act, as enacted by chapter 69 of the Statutes of 1920, read together, form considerable justification for the view that the office of Deputy Speaker was intended to be continued during periods of dissolution to the same extent as that of the Speaker, and I would be disposed, therefore, to recommend payment in accordance with this view.

Yours truly,

(Sgd.) W. STUART EDWARDS,  
Acting D. M. J.



## CHAPTER XV

### OFFICERS OF THE HOUSE

THE CLERK OF THE HOUSE.  
TO CARE FOR RECORDS AND SUPERVISE OFFICIALS.  
TO MAKE AND DISTRIBUTE LIST OF DOCUMENTS.  
TO EMPLOY EXTRA WRITERS.  
LAW CLERK.  
SERGEANT-AT-ARMS.  
COMPLETION OF WORK AT CLOSE OF SESSION.  
TRAVELLING EXPENSES NOT ALLOWED.  
HOURS OF ATTENDANCE.  
VACATIONS.

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### STANDING ORDERS

83. (20th December, 1867.) The Clerk of the House is responsible for the safe-keeping of all the papers and records of the House, and has the direction and control over all the officers and clerks employed in the offices, subject to such orders as he may, from time to time, receive from Mr. Speaker or the House.

84. (20th December, 1867.) The Clerk of the House shall place on Mr. Speaker's table, every morning, previous to the meeting of the House, the order of the proceedings for the day.

85. (20th December, 1867.) It is the duty of the Clerk to make and cause to be printed and delivered to each member, at the commencement of every session of Parliament, a list of reports or other periodical statements which it is the duty of any officer or department of the government, or any bank or other corporate body to make to the House, referring to the act or resolution, and page of the volume of the laws or journals wherein the same may be ordered; and placing under the name of each officer or corporation a list of reports or returns required of him, or it, to be made, and the time when the report or periodical statement may be expected.

86. (20th December, 1867.) The Clerk shall employ at the outset of a session, with the appropriation of Mr. Speaker, such extra writers as may be necessary; engaging others as the public business may require.

87. (20th December, 1867; 22nd March, 1927.) It is the duty of the Joint Law Clerks of the House to assist members of the House and deputy heads in drafting legislation; to prepare bills for the Senate after they have been passed by the House; to supervise the printing and arrangement and extending of the statutes year by year as they are issued at the close of each parliamentary session; to revise, print and put marginal notes upon all bills; to revise before the third reading all amendments made by select committees, or in committees of the whole; and to report to the several chairmen of the various select committees when requested so to do, any provisions in private bills which are at variance with general acts on the subjects to which such bills relate or with the usual provisions of private acts on similar subjects, and any provisions deserving of special attention.

88. (20th December, 1867; 22nd March, 1927.) (1) The Sergeant-at-Arms is responsible for the safe-keeping of the Mace, and of the furniture and fittings of the House.

(2) No stranger who has been committed, by order of the House, to the custody of the Sergeant-at-Arms, shall be released from such custody until he has paid a fee of four dollars to the Sergeant-at-Arms.

(3) The Sergeant-at-Arms serves all orders of the House upon those whom they may concern and is entrusted with the execution of warrants issued by Mr. Speaker. He issues cards of admission to, and preserves order in, the galleries, corridors, lobbies and other parts. He is responsible for the movable property belonging to the House.

(4) The Sergeant-at-Arms shall employ at the outset of a session, with the approbation of Mr. Speaker, such constables, messengers, pages and labourers as may be necessary, engaging others as the service of the House may require.

(5) The Sergeant-at-Arms has the direction and control over all constables, messengers, pages, labourers and other such employees subject to such orders as he may receive from Mr. Speaker or the House.

89. (20th December, 1867.) It is the duty of the officers of this House to complete and finish the work remaining at the close of the session.

90. (20th December, 1867.) No allowance shall be made to any person in the employ of this House who may not reside at the seat of government, for travelling expenses in coming to attend his duties.

91. (20th December, 1867.) The hours of attendance of the respective officers of this House, and the extra clerks employed during the session, shall be fixed from time to time by Mr. Speaker.

92. (20th December, 1867.) Before filling any vacancy in the service of the House by Mr. Speaker, inquiry shall be made touching the necessity for the continuance of such office; and the amount of salary to be attached to the same shall be fixed by Mr. Speaker, subject to the approval of the Board of Internal Economy and of the House.

ANNOTATIONS, COMMENTS AND  
PRECEDENTS

**443.** The Clerk of the House of Commons is appointed by the Crown under the Great Seal and not by the Speaker or Parliament. He is one of the five chief officers of the Dominion Public Service who take precedence over all the deputy ministers, the other chief officers being the Clerk of the Privy Council, the Clerk of the Senate, the Governor-General's Secretary and the Auditor-General.

The duties of the Clerk of the House of Commons are both technical and administrative, because he directs the procedure for the sittings and supervises the staff of the House.

His main qualification is a sound knowledge of Parliamentary law, including statutory enactments as well as ordinary rules of parliamentary usage. The House of Commons of Canada is governed by a system of standing orders and conventions which have been adapted from the Great Westminster prototype and established in the Dominion to meet existing conditions. To tell the difference of procedure in certain cases is one of the Clerk's duties. What is the general principle, the British usage or Standing Order? Have we a standing order of our own in the matter? When was it passed? Is the case one which may be decided by British precedent? How to apply May's Parliamentary Practice to the Canadian Commons? What decisions of the British Speaker can be accepted in Canada? These and a thousand other similar questions have to be solved by the Clerk who may be consulted at any time by the Speaker and the Leader of the House. In the midst of a debate, questions of order of all descriptions may be raised and the Clerk must be ready to supply authorities for a decision. Moreover, his advice is sought for all kinds of motions and amendments which must be drafted according to certain rules of practice. As the Clerk is the Chief of the whole department, he must also be familiar with the phraseology used by the officers in editing the Journals of the House which contain the *res gestae* of the House for every session.

It sometimes happens that the Speaker is not a lawyer but a doctor, a business man or a farmer, as for instance in the cases of Dr. Blanchet (1879-82), Thomas Bain, farmer (Aug. 11, 1899-Oct. 9, 1900), Peter White (1891-1896); or he may be a journalist like the late Timothy Anglin (1874-78), or Charles Marcil (1909-11); or a dentist like Gaspard Fauteux

(1945-49). The same may be said of the Deputy Speaker. In cases like these, the Government and the Opposition rely entirely on the Clerk whose assistance is necessary in the preparation of the decisions given from the Chair. This involves a great responsibility.

During a crisis, when the Government and the Opposition are using all the strategy possible under the rules of the House, the leaders are in continuous consultation with the Clerk with respect to their motions and amendments. A wrong interpretation of the rules may then lead to the most dangerous miscalculations, and the Clerk has to be very sure of his ground when he thus advises the men whose political future must be decided on the floor of the House.

His executive duties are absorbing and keep him busy the whole year round.

He is the Chief of the whole staff of the House of Commons under Standing Order 83 of the House which reads as follows:

"The Clerk of the House is responsible for the safe-keeping of all the papers and records of the House, and has the direction and control over all the officers and clerks employed in the offices, subject to such orders as he may, from time to time, receive from Mr. Speaker or the House."

and, under Standing Order 86:

"The Clerk shall employ at the outset of a session, with the approbation of Mr. Speaker, such extra writers as may be necessary; engaging others as the public business may require."

Section 2 of the Civil Service Act says that "In this Act and in all regulations made hereunder, unless the context otherwise requires: '(c) "deputy" or "deputy head" means and includes the deputy of the Minister of the Crown presiding over the department, the Clerk of the Privy Council, the Clerks of the Senate and *House of Commons*, the Librarians of Parliament, the Comptroller of the Royal Canadian Mounted Police, the Superintendent of Insurance, the Dominion Archivist, the Board of Railway Commissioners for Canada, and, in all cases in which such meaning is not inconsistent with his powers and duties under the Consolidated Revenue and Audit Act, the Auditor-General.' '(e) "head of department" means the Minister of the Crown for the time being presiding over the department and includes the Speakers of the Senate and House of Commons'."

The significance given to these subsections is attached to the Clerks of the Senate and House of Commons in all the other statutes referring to them, viz., the Superannuation Act, the Retirement Fund Act and the Civil Service Insurance Act.

During the sessions of the House—and they now last between four and five months every year—the Clerk has to be in his office for executive work in the forenoon and to attend the sittings until 11 o'clock p.m., a very strenuous duty which can only be performed by a man enjoying the strongest physical constitution.

**444.** It is a mistake to believe that the Clerk of the House of Commons is idle from the prorogation of a session to the opening of another. He is the deputy head of a very large department with a staff of about four hundred men during the session and seventy in recess. All the officers of the House, such as the Sergeant-at-Arms, the Law Clerks, the Editor of Debates, the Chief Clerk of Journals, the Chief Clerk of Debates, the Chief Clerk of Journals, the Chief Clerk of Committees and Private Bills, the Accountant, the Postmaster, the Chief of Distribution and the Stationery Clerk are under his authority. No application can go out to the Civil Service Commission on behalf of the House of Commons unless signed by the Clerk. It is to the Clerk that the Auditor-General writes for explanations about payments. After the session, the Clerk has to see that the Debates, the Journals, and many other documents be published in both languages, bound and distributed. He also has to see that the legislation passed by Parliament be supplied to the King's Printer for the annual statutes, proof of which is read under his responsibility by the Law Clerks of the House.

Parliament does not vanish with prorogation. During the recess, all kinds of enquiries come through the mail from solicitors and other persons seeking information regarding the annual statute or parliamentary papers. Ministers' secretaries and departmental officers are constantly communicating with the Clerk who cannot take more than the statutory holidays during which he has to keep up with his correspondence. If a member of the House loses his railway transportation card during the summer, as it sometimes happens, the Clerk has to issue another one under a new number and send out forty-three notices to the railway companies. If a member resigns or dies, the Clerk has to see that the Speaker immediately signs a warrant authorizing the Chief Electoral Officer to issue a writ for a new election. This necessitates the Clerk's presence in



Ottawa. He authenticates by his signature all the orders of the House and has the custody of all the journals, papers and files, and it is "at his peril" if he suffers any of them to be taken from the table or out of his custody without the leave of the House; but members have the right to peruse all papers in the possession of the Clerk and to obtain copies of them through him. He certifies and audits the accounts of the House. It is his duty to deliver to each member at the commencement of every session, a list of all periodical statements which are required by law or by resolution of the House to be laid before it. Under Standing Order 27 he is to take care that a copy of the Journals certified by him be delivered each day to his Excellency the Governor-General. He lays on the table returns relative to or in possession of his department, and prepares annually the estimates of the sums required for the payment of all the expenses of the House for the ensuing fiscal year. He lays private bills upon the table after the petitions for same have been favourably reported upon by the examiner or the Committee on Standing Orders. He is the recording officer of the House, and, as such, has to make true entries, remembrances and journals of the things done and passed in the House of Commons. His minutes, styled the "scroll" are written in a brief and convenient shape which comprises a record of all the proceedings. He cannot record any motion until it is formally proposed from the Chair. He is addressed by members and puts such questions as are necessary on an election of a Speaker, and for the adjournment of the House, when it is necessitated by the death or retirement of the Speaker, or by the absence of the Speaker and Deputy Speakers. (May 197.) He is appointed by order-in-council to administer the oath of allegiance taken by newly elected members. The Clerk of the Commons in England—but not in Canada—is the "under Clerk of the Parliaments to attend upon the Commons." He certifies the statements of members for the payment of their travelling expenses and indemnity under the terms of the Senate and House of Commons Act.

**445.** The Clerk Assistant is appointed by letters patent in England, have been eminent lawyers and leading authorities on the law of Parliament. Elsynge, who made the procedure of the House of Commons, was Clerk; Rushworth, to whom we owe the great collection of materials for the history of the Civil War, was Clerk Assistant. The two writers on whose works

our whole acquaintance with parliamentary procedure is based, John Hatsell and Sir Erskine May, were both Clerks of the Commons for long periods. Sir Reginald Palgrave, the editor of May's treatise, held the same office for years. In Canada, Sir John Bourinot, to whom as much praise is due as to May himself, was Clerk of the House when he edited his great work on the law of Parliament.

**445.** The Clerk Assistant is appointed by letters patent under the great seal and takes the oath of allegiance and of office before the Clerk. He is a commissioner appointed under the Great Seal to administer the oath of allegiance to the members of the House. He is authorized by the provisions of the Senate and House of Commons Act to certify the statements of the members for the payment of their travelling expenses and indemnity. He sits at the table on the right hand of the Clerk and both are described as "the Clerks at the table." He receives the notices of questions, motions and amendments which have to be entered on the notice paper. It is his duty to see that these are drawn according to the rules of the House and to refer to the Speaker, the Clerk or the interested member any that seem to be out of order. He reads the questions in the language with which he is best acquainted and he calls out in French and English the first, second and third reading of bills, and the readings of amendments and resolutions, as soon as they are passed by the House. He reads the reports from the Standing and Special Committees. When a bill or resolution is adopted, he writes on the back of it the dates of the different stages of procedure it went through and endorses it. He acts as reading clerk for any document which forms part of a question which needs to be read. He reads the orders of the day as soon as they are called by the Speaker. Members apply to him for any sessional paper that is required in debate, and he is in constant communication during the sittings with the different branches of the staff for supplying the needs of the House. He also acts as deputy of the Clerk in case of his unavoidable absence. When bills have been adopted by the House, he takes them to the Senate where he delivers them at the bar to one of the Clerks at the table without the business in course of transaction being interrupted. He also receives at the bar of the Commons the messages brought in by the Clerk Assistant of the Senate. When the House is in Committee, the Clerk Assistant acts as Clerk of the Committee and takes minutes of

its proceedings. He calls off the names of the members on a division in the House, but he only counts the members when a vote takes place in Committee.

**446.** The control and management of the officers of the Houses are as completely within the privilege of the Houses as any regulation of its own proceedings within its own walls. These officers are under the guidance of certain rules and orders of the House which are among the regulation of its proceedings and as essentially matters of privilege as the appointment of committees, the conduct of public business and the procedure of the Houses, generally, including the acts of the Speaker himself in the Chair. Neither the Government nor any other authority has the power to deal with the staff of the House of Commons unless specially authorized to do so by statute or resolution of the House. Orders-in-council regulating certain activities of the civil service do not apply to the staffs of Houses of Parliament. This is confirmed by the following opinion given to the Clerk of the House of Commons on the 17th of December, 1936: "Dear Mr. Beauchesne:—With reference to your letter of the 23rd ultimo respecting the retirement of all employees of the Government at the age of sixty-five, I am of the opinion that the provisions of the Order-in-council referred to by you are not applicable to officers and employees of the House of Commons unless proper steps have been taken to have these Orders-in-council first tabled and then approved by the House with respect to its officers and employees. Yours truly, W. Stuart Edwards, Deputy Minister of Justice."

**447.** The Civil Service Commission to whom the Houses of Parliament have delegated, under the Civil Service Act, some of their powers with respect to their officers and employees, has obtained from the Governor-in-Council the authorization to give a preference to applicants who have been employed continuously for at least five sessions. The Treasury Board's submission, approved by Order-in-Council P.C. 11-19 is as follows. "The Board, on a report from the Civil Service Commission, submitted by the Honourable the Secretary of State, recommended under the provisions of the Civil Service Act, and when, in the opinion of the Civil Service Commission, a position on the staff of the House of Commons or Senate should be filled by the appointment of a sessional employee who already has some knowledge of parliamentary procedure, such position shall be considered as being excluded in part from the operation of the Civil Service Act to the extent that the competition for the said

position may be limited to persons who at the time of competition are employed on the sessional staff of the House of Commons or Senate, as the case may be, and who have been so employed continuously for at least five sessions."

**448.** Although the House has divested itself of its authority in the appointment, transfer, promotions, salaries, increases and classifications of its staff by enacting the Civil Service Act, it must not be forgotten that the House of Commons is not a department of the Government. The control of its own officers is one of its undoubted privileges. Parliament is a distinct body, one of the three constituent elements of our system of government, the other two being the Governor-General and the Cabinet. In passing the Civil Service Act, the House has agreed to use the machinery of the Civil Service Commission for certain fixed purposes but it did not alienate its traditional rights nor renounce its independence. Caution has been taken not to include the staff of the House in the definition of "Civil Service" given in this Act. Section 62 provides that nothing in the said Act shall be held to curtail the privileges now enjoyed by the officers, clerks and employees of the House with respect to rank and precedence, or to attendance, office hours, leave of absence or with respect to engaging in such employment during parliamentary recess as may entitle them to receive extra salary or remuneration.

**449.** The Sergeant-at-Arms is appointed by letters patent under the Great Seal. His duties are to attend the Speaker with the mace on entering and leaving the House, or going to the Senate. He will desire the members to take their places, not to stand or move from their places, when the House is sitting. He takes into custody strangers who are irregularly admitted into the House or who misconduct themselves there; causes the removal of persons directed to withdraw; introduces with the mace senators or judges attending within the bar, and messengers from the Senate; brings to the bar prisoners to be reprimanded by the Speaker or persons in custody to be examined as witnesses. He has a chair close to the bar of the House and is assisted by a deputy sergeant. He is entrusted with the execution of all warrants for the commitment of persons ordered into the custody of the House, and for removing them to the tower or elsewhere or retaining them in his own custody. He serves, by his messengers, all orders of the House upon those whom they concern and maintains order

in the lobbies, corridors and passages of the House. Certain fees are payable to him by persons committed to his custody. He is the official house-keeper of the Commons. He has a general charge of all the rooms and offices of the Commons as respects their care and furnishings. He is usually one of the officers appointed under the Great Seal to administer the oath of allegiance to newly elected members. He prepares every year an estimate to cover the expenses under his control, incidental to the upkeep of the House of Commons. He issues cards of admission to, and preserves order in, the galleries, corridors and other parts of the House of Commons. His responsibility for the movable property belonging to the House is exercised wherever such property is situated, either inside or outside the Parliament building.

**450.** (1) The Sergeant-at-Arms is entrusted with the care of the mace which is the symbol of the House's authority. The mace destroyed in the February fire of 1916 had been purchased in 1845. It was made of silver richly gilded and chased in heraldic design.

(2) The mace, originally a weapon of offence made of iron, steel or latten, was capable of breaking through the strongest armour. It was carried in battle by mediaeval bishops (Odo of Bayeux is represented on the Bayeux tapestry as wielding one) instead of the sword, so as to conform to the canonical rule which forbade priests to shed blood. The earliest ceremonial maces, as they afterwards became, though at first intended to protect the king's person, were those borne by the Sergeants-at-Arms, a royal bodyguard established in France by Philip II, and in England probably by Richard I. By the 14th century a tendency towards a more decorative sergeant's mace, encased with precious metals, is noticeable.

(3) The general design of the mace, which was donated to Canada on June, 1916, is on similar lines to that used in the English House of Commons. The vase-shaped head is divided into four panels by female figures with acanthus leaf terminals. These panels contain the following beautifully embossed emblems: The Arms of the Dominion of Canada, the Rose for England, the Harp for Ireland and the Thistle for Scotland; above each emblem is the Royal Crown, and the initials G.R. are placed on either side. In the spaces above the figures is shown the Beaver executed in bold relief. The head of the mace is supported by four ornamental brackets and is sur-

mounted by the Royal Crown, indicating the Royal authority; beneath the arches where the cushion is usually placed, there is a raised circular space on which appears in relief the full blazon of the Royal Arms of Great Britain and Ireland. The staff is divided at intervals by two spiral fluted knops and the whole length is richly chased with the Rose, Shamrock, Thistle and the Maple Leaf. The massive foot of the staff is decorated with Roses, Thistles and the Fleur-de-lys, the plain space above bearing the following inscription:

This Mace, replacing the original Mace of the House of Commons of the Dominion of Canada destroyed by fire on February 3rd, 1916, was presented by

Colonel the Rt. Hon. Sir Charles Cheers Wakefield, Lord Mayor of London, and the Sheriffs of London,  
George Alexander Touche, Esq., M.P., and Samuel George Shead, Esq., June, 1916.

In its design and execution the Mace forms an emblem of Authority well worthy of the great country for which it is intended.

Manufactured by the Goldsmiths & Silversmiths Company, Ltd., Jewellers to His Majesty the King, 112, Regent Street, London, W.

**451.** When the session is over, the statutes have to be issued, the Journals must be edited, the debates and such of the parliamentary papers as have been ordered to be printed must be put in book form. The decisions given by the Speaker on points of order during the sessions are collected for future reference. The post-office, the stationery office, the accountant's office, the record office and the reading room are kept open in recess as well as during the session.

**452.** Officers and Clerks of the House have to be in their offices in the forenoon during sessions besides being in attendance during the sittings of the House. They work from twelve to fifteen hours a day when the House is in session. Even if the House sits all night, they must be on duty in the morning in case any member may need their services.

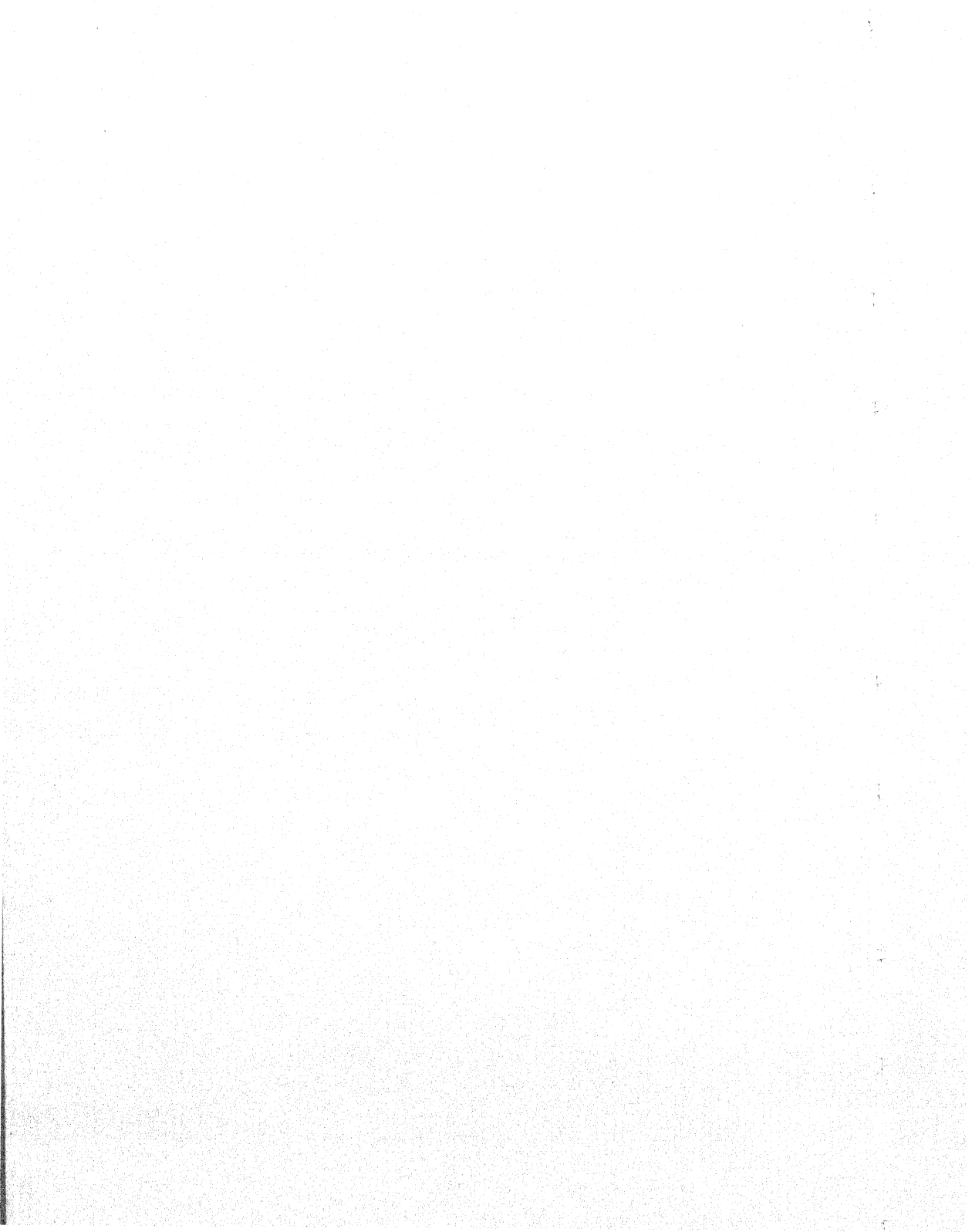
**453.** The suspension and dismissal of any member of the staff of the House of Commons is fully provided for in sec. 19 of the House of Commons Act which reads as follows:

"1. If any complaint or representation is at any time made to the Speaker for the time being of the misconduct

or unfitness of any clerk, officer, messenger or other person attendant on the House of Commons, the Speaker may cause an enquiry to be made into the conduct of or fitness of such person. 2. If thereupon it appears to the Speaker that such person has been guilty of misconduct, or is unfit to hold his situation, the Speaker may, if such clerk, officer, messenger or other person has been appointed by the Crown, suspend him and report such suspension to the Governor-General, and if he has not been appointed by the Crown, suspend or remove him."

**454.** Officers, clerks and messengers, but not temporary messengers, are to take the oath of allegiance on their appointment before the Clerk who shall keep a register for the purpose. The Clerk takes the oath of allegiance and the oath of office before the Speaker.

**455.** The Superannuation Act applies to the permanent officers and servants of both Houses "who for the purposes of this Act shall be held to be in the Civil Service of Canada, saving always all legal rights and privileges of either House as respects the appointment or removal of these officers or servants, or any of them."





**PART II**  
**CHAPTER XVI**  
**PRIVATE BILLS**

PETITIONS.  
DEPOSIT OF BILLS AND FEES.  
ADDITIONAL CHARGES.  
PUBLICATION OF STANDING ORDERS.  
PUBLICATION OF NOTICES.  
EXAMINER OF PRIVATE BILLS.  
MODEL BILL.  
MAP OR PLAN WITH PETITION.  
MAP OR PLAN WITH BILL.  
EXAMINATION OF PETITION FOR PRIVATE BILL.  
INSTRUCTION TO COMMITTEES.  
SUSPENSION OF RULES.  
INTRODUCED ON PETITION.  
BILLS CONFIRMING AGREEMENTS.  
BILLS AND PETITIONS REFERRED.  
NOTICE OF SITTING OF COMMITTEE.  
PROVISION NOT COVERED BY NOTICE.  
ALL BILLS TO BE REPORTED.  
PREAMBLE NOT PROVEN.  
CHAIRMAN TO SIGN BILLS AND INITIAL AMENDMENTS.  
NOTICE OF AMENDMENTS.  
REPRINTING OF BILLS WHEN AMENDED.  
AMENDMENTS BY THE SENATE.  
RECORD.  
LIST OF BILLS.  
PARLIAMENTARY AGENTS.  
UNPROVIDED CASES.

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**STANDING ORDER 93**

**Petitions for Private Bills**

[20th December, 1867; 29th March, 1876; 10th July, 1906; 22nd March, 1927; 12th July 1955]. Petitions for Private Bills shall only be received by the House if filed within the first six weeks of the session, and every Private Bill originating in the Commons shall be presented to the House within two weeks after the petition therefor has been favourably reported upon by the Examiner of Petitions or by the Committee on Standing Orders.

### ANNOTATIONS, COMMENTS AND PRECEDENTS

**456.** The ancient rule as to petitioners for private legislation was laid down by Mr. Francis Palgrave before a Special Committee of the British House on the 22nd of June, 1832. The principle was, said he, that no person should come before Parliament as a suitor, or trouble it, if, on the face of his petition, he could have his right at home. If there were any other mode of obtaining redress, he was not to apply to Parliament, but, if from the insufficiency of the law or any other similar cause, he could not obtain redress, then the Supreme Court of Parliament was to give him a speedy and effectual remedy. This course continued until the time of Richard II, when Courts of Equity were gradually established. The remedial jurisdiction of Parliament wholly ceased and was only revived under James I. Private Acts of Parliament have arisen out of the ancient petition for redress and were formerly called the "Privilegium" because Parliament, in passing them, was considered as granting a privilege. For this reason the committees of the House investigate the facts in each case and report. The House, in reading a private Bill for the second time, decides that the matter involved is one which may be looked into by the committee. It is only in case that an exceptional principle is enunciated that the second reading is refused.

**457.** The rules that govern petitions generally apply to those for private Bills, and it is therefore important that every applicant for private legislation shall carefully observe those rules, as an informality may jeopardize the measure he is applying for. B. 583.

**458.** "Private and public Bills differ not merely in the mode of origination, but in the mode of procedure for passing them. In the case of a private Bill the rules of the Standing Orders of the two Houses as to the giving of certain notices and the deposit of Bills before a certain date must be complied with, in order that all persons may have notice if their private interests are affected. Each Bill is considered by a Select Committee of each House, who may hear the promoters and opponents by counsel, consider their private interests, and determine, in a quasi-judicial capacity, whether the promoters of the Bill have justified their request for a privilegium, and whether private interests are properly protected." (Ilbert, pp. 28-39.)

**459.** A private Bill is introduced so as to alter the law relating to some particular locality or to confer rights on, or relieve from liability, some particular person or body of persons.

The object of a private Bill is, in fact, to obtain a privilege—that is to say, an exception from the general law, or a provision for something which cannot be obtained by means of the general law, whether that general law is contained in a statute or is Common Law.

A private Bill containing provisions not contemplated in the notice should be referred to the Standing Committee on Standing Orders to report whether the powers to be conferred are in excess of the notice given or whether they are substantially included in it. C.J., Vol. 3, p. 116.

**460.** The boundary line between public and private Bills is narrow and has varied at different times. The House has refused to give a private Bill a second reading on the ground that it should have been introduced as a public Bill.

When a public Bill affects private interests in such a manner that if it were a private Bill the Standing Orders would require notice to be given, it is called a hybrid Bill, and the practice is to refer the Bill to the examiners of Standing Orders like a private Bill, and to make the Bill proceed in nearly the same way as if it were a private Bill. Ilbert, 29.

**461.** Private Bills frequently affect the general or public interests of particular localities; and in some cases, from the extent to which such interests are effected, measures proposed as private Bills have been declared unfit for private legislation and the parties have been required to proceed by public Bill.

Bills involving questions of general policy, though limited in their application to particular areas are in general to be introduced as public Bills. (Parl. Deb., 3s., Vol. 177, p. 642.)

**462.** The British House of Commons has given the following definition of a private Bill: "Every Bill for the particular interest or benefit of any person or persons, whether the same be brought in upon petition, or motion, or report from a committee, or brought from the Lords, hath been and ought to be deemed a private Bill within the meaning of the table of fees." This distinction of the private Bill as contrasted with the public Bill intended for the general or public benefit, or dealing with a general or public interest, is to be regarded as the principal criterion; but, in Canada, under Standing Order 103, all private

Bills must be introduced on petition. They may be brought in from the Senate but they cannot be introduced on motion or report from a committee.

**463.** "In some cases private Bills have been defeated by a resolution of the United Kingdom House that they ought to be dealt with as public Bills. Instances are supplied by the Manchester Education Bill, 1854, the Liverpool Licensing Bill, 1865, and the Keble College Bill, 1888. The Presbyterian Church of Ireland Bill, 1871, was introduced as a private Bill, but was withdrawn in consequence of an objection that the matter ought to be dealt with by public legislation; and a public Bill, which became law as the Irish Presbyterian Church Act, 1871, took its place."

**464.** It is a recognized principle in the Canadian, as in the English Parliament, that Ministers of the Crown should not initiate or promote private Bill legislation. In England, Ministers are exempt from serving on private Bills committees, but in Canada, they may do so and they closely follow private Bills with a view to guarding the public interest. (B. 581.)

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### Standing Order 94

#### Time Limited for Deposit

(1) [20th December, 1867; 22nd March, 1927; 12th July, 1955]. Any person desiring to obtain any Private Bill shall deposit with the Clerk of the House, not later than the first day of each session, a copy of such Bill in the English or French language, with a sum sufficient to pay for translating and printing the same; the translation to be done by the officers of the House, and the printing by the Department of Public Printing.

(2) After the second reading of a Bill, and before its consideration by the Committee to which it is referred, the applicant shall in every case pay the cost of printing the Act in the Statutes, and a fee of five hundred dollars.

(3) The following charges shall also be levied and paid in addition to the foregoing, viz:—

(a) When any Standing Order of the House is suspended in reference to a bill or

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| the Petition therefor, for each such suspension .....  | \$100 00 |
| (b) When a Bill is presented in the House after the eighth week of the session and not later than the twelfth week ..... | 100 00   |
| (c) When a bill is presented in the House after the twelfth week of the session .....                                    | 200 00   |
| (d) When the proposed Capital Stock of a Company does not exceed \$250,000 ...   | 100 00   |
| (e) When the proposed Capital Stock of a Company is over \$250,000 and does not exceed \$500,000 .....                   | 200 00   |
| (f) When the proposed Capital Stock of a Company is over \$500,000 and does not exceed \$750,000 .....                   | 300 00   |
| (g) When the proposed Capital Stock of a Company is over \$750,000 and does not exceed \$1,000,000 .....                 | 400 00   |
| (h) When the proposed Capital Stock of a Company is over \$1,000,000 and does not exceed \$1,500,000 .....               | \$600 00 |
| (i) When the proposed Capital Stock of a Company is over \$1,500,000 and does not exceed \$2,000,000 .....               | 800 00   |
| (j) For every additional million dollars or fractional part thereof .....  | 200 00   |
- (4) When a bill increases the capital stock of an existing company, the additional charge shall be according to the foregoing tariff, upon the amount of the increase only.
- (5) (a) When a bill increases or involves an increase in the borrowing powers of a company without any increase in the capital stock, the additional charge shall be \$300.00.
- (b) When a Bill increases both the capital stock and the borrowing powers of a Company, an additional charge shall be made upon both.
- (6) If any increase in the amount of the proposed capital stock or borrowing powers of a company, be made at any stage of a bill, such bill shall not be advanced to the next stage until the charges consequent upon such change have been paid.

(7) In this standing order the term "proposed capital stock" includes any increase thereto provided for in the bill; and where power is taken in a bill to increase at any time the amount of the proposed capital stock, the additional charge shall be levied on the maximum amount of such proposed increase which shall be stated in the bill.

(8) The additional charges provided for in this standing order shall also apply to Private Bills originating in the Senate; provided, however, that if a petition for any such bill has been filed with this House within the first six weeks of the session, the additional charges made under paragraphs (b) or (c) of subsection 3 shall not be levied thereon.

(9) The Chief Clerk of Private Bills shall prepare and send to the promoter or parliamentary agent in charge of every Private Bill a statement of fees and charges payable under this standing order, and shall collect all such fees and charges and deposit the same with the Accountant of the House and shall send a copy of each such deposit slip to the Clerk of the House.

**465.** When the promoters have asked leave to withdraw the Bill; when the Bill has been rejected by the committee; when its provisions have been amalgamated with another; when the powers applied for have been materially diminished; when the Bill has been withdrawn in the House after having been favourably reported by the committee; when the necessity for the passage of the Bill arose from no fault of the promoters but from circumstances beyond their control; when the Bill is a mere amendment to a previous act; when the project provided for in the Bill is of great public benefit; when the Bill is of a purely humanitarian, charitable, philanthropic or religious character affecting no commercial interest; when the committee makes no report on the Bill; when the Bill, if passed, never comes into force; when a Bill from the Commons has been rejected by the Senate—it is usual to refund the fees upon a motion to that effect being made on the recommendation of the committee. B. 603, 604.

**466.** The fees paid on a Bill that had not become law have been refunded in a subsequent session. Can. Com. J. (1875) 343.

When it is not intended to go on with a Bill, the regular course is to move at the same time for leave to withdraw it and to refund the fees. B. 604.

**467.** Refunds of public moneys received in respect of proceedings before the Senate or House of Commons, which are authorized by resolution of the Senate or the House of Commons respectively, or by the rules or Standing Orders of either House, shall be notified by the proper officer of Parliament to the minister and shall be paid out of the Consolidated Revenue Fund.

Under the Audit Act, the officers of the House of Commons have no right to refund fees for private Bills. When there is a case for reimbursement a report is made by the Committee on Private Bills to the House and, if it is concurred in, a copy of the House's decision is forwarded by the Clerk to the Minister of Finance. From that moment the matter is one for the Government to deal with, and it seems that under the Act, the amount can be refunded without further parliamentary authority.

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#### Standing Order 95

##### Publication of Rules

[20th December, 1867; 12th May, 1873; 22nd March, 1927]. The Clerk of the House shall publish weekly in the *Canada Gazette* the standing order respecting notices of intended applications for private bills, and shall announce by notice affixed in the lobbies of the House, by the first day of every session, the time limited for receiving petitions for private bills.

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#### Standing Order 96

##### Publication of Notices

(1) [20th December, 1867; 17th May, 1873; 22nd May, 1874; 20th April, 1883; 28th May, 1886; 10th October, 1903; 10th July, 1906; 22nd March, 1927]. All applications to Parliament for private bills, of any nature whatsoever, shall be advertised by a notice published in the *Canada Gazette*; such notice shall clearly and distinctly state the nature and objects of the application, and shall be signed by or on behalf of the applicants, with address of the party signing the same; and when the application is for an Act of incorporation, the name of the proposed

company shall be stated in the notice. If the works of any company (incorporated, or to be incorporated) are to be declared to be for the general advantage of Canada, such intention shall be specifically mentioned in the notice; and the applicants shall cause a copy of such notice to be sent by registered letter to the clerk of each county or municipality which may be specially affected by the construction or operation of such works, and also to the Secretary of the Province in which such works are, or may be located. Every such notice sent by registered letter shall be mailed in time to reach its destination not later than two weeks before the consideration of the proposed bill by the committee to which it may be referred; and proof of compliance with this requirement by the applicants shall be established by statutory declaration.

(2) In addition to the notice in the *Canada Gazette* aforesaid, a similar notice shall also be published in some leading newspaper, as follows:

(A) When the application is for an Act to incorporate:

1. *A Railway or Canal Company*—in the principal city, town or village in each county or district, through which the proposed railway or canal is to be constructed.

2. *A Telegraph or Telephone Company*—In the principal city or town in each Province or Territory in which the company proposes to operate.

3. A company for the construction of any works which in their construction or operation might specially affect the particular locality; or for obtaining any exclusive rights or privileges; or for doing any matter or thing which in its operation would affect the rights or property of others:—In the particular locality or localities in which the business, rights or property of other persons or corporations may be affected by the proposed Act.

4. A Banking Company; an Insurance Company; a Trust Company; a Loan Company; or an Industrial Company without any exclusive powers:—In the *Canada Gazette* only.

(B) When the Application is for the purpose of amending an existing Act:



1. For an extension of any line of railway, or of any canal; or for the construction of branches thereto:—In the place where the head office of the Company is situated, and in the principal city, town or village in each county or district through which such extension or branch is to be constructed.

2. For an extension of time for the construction or completion of any line of railway or of any branch or extension thereof, or of any canal, or of any telegraph or telephone line, or of any other works already authorized:—At the place where the head office of the Company is situated and in the principal city or town of the districts affected.

3. For the continuation of a charter or for an extension of the powers of the Company (when not involving the granting of any exclusive rights) or for the increase or reduction of the capital stock of any company; or for increasing or altering its bonding or other borrowing powers; or for any amendment which would in any way affect the rights or interests of the shareholders or bondholders or creditors of the Company:—In the place where the head office of the Company is situated or authorized to be.

(C) When the application is for the purpose of obtaining for any person or existing corporation any exclusive rights or privileges or the power to do any matter or thing which in its operation would affect the rights or property of others:—In the particular locality or localities in which the business, rights or property of others may be specially affected by the proposed Act.

(3) All such notices, whether inserted in the *Canada Gazette* or in a newspaper shall be published at least once a week for a period of four consecutive weeks; and when originating in the Province of Quebec or in the Province of Manitoba shall be published in English in an English newspaper and in French in a French newspaper, and in both languages in the *Canada Gazette*, and if there is no newspaper in a locality where a notice is required to be given, such notice shall be given in the next nearest locality wherein a newspaper is published; and proof of the due publication of notice shall be established in each

case by statutory declaration; and all such declarations shall be sent to the Clerk of the House endorsed "Private Bill Notice."

**468.** There are many instances where the committee have felt justified in dispensing with a notice altogether when they were fully aware that all parties interested had been sufficiently notified or that no interests were affected except those of the petitioners. See Canadian Commons Journals, 1867, pp. 8, 39, 177, 207, 210; 1869, pp. 85, 162, 185; 1870, pp. 44, 82, 83, 113; 1871, pp. 78, 102; 1872, pp. 58, 80; 1873, pp. 123, 162; 1874, pp. 166, 218, 255; 1875, pp. 216, 303; 1876, pp. 102, 170; 1879, pp. 83, 136; 1882, p. 83; 1883, p. 67; 1888, p. 204.

**469.** When, in any case, the notice, upon examination, proves to be insufficient, it is so reported to the House, and (unless accompanied by a recommendation to suspend the Rule) all further action in the matter is dropped; the decision of the committee being rarely overruled by the House.

**470.** In judging as to the sufficiency of a notice submitted for their examination, the committee compare its terms with those of the petition, and any important variance or omission in the former is fatal either to the whole measure, or to a particular provision therein, as the case may be. In some instances the notice (though published in the prescribed manner in other respects) has been unfavourably reported on because it did not sufficiently indicate the objects sought to be attained.

**471.** If the notice be found too general in its terms, or if no mention be made of certain matters included in the petition which require a specific notice, the facts are specially reported, and the promoters restricted, in the details of the Bill, within the terms of the notice; or if the matters so omitted are allowed to be inserted in the Bill, due provision is made therein for the protection of all parties whose rights might be affected by the want of a specific notice.

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### Standing Order 97

#### Examiner of Private Bills; Model Bill

(1) [20th April, 1883; 23rd June, 1887; 22nd March, 1927]. The Chief Clerk of Private Bills shall be the Examiner of Private Bills, and, as such, shall examine

and revise all private bills before they are printed, for the purpose of insuring uniformity where possible and of seeing that they are drawn in accordance with the standing orders of the House respecting private bills.

(2) Every bill for an Act of incorporation where a form of model bill has been adopted, shall be drawn in accordance with a model bill (copies of model bills may be obtained from the Clerk of the House). Any provisions contained in any such bill which are not in accord with the model bill shall be inserted between brackets or underlined, and shall be so printed.

(3) Where a private bill amends any section, subsection or paragraph of an existing Act, such section, subsection or paragraph shall be repealed in the text of the bill and re-enacted as proposed to be amended, the new matter being indicated by underlining; and the section, subsection or paragraph which is to be so repealed, or so much thereof as is essential, shall be printed in the right hand page opposite such section, subsection or paragraph.

(4) When a private bill repeals an existing section, subsection or other minor division of a section, that section, subsection or division, or so much thereof as is essential, shall be printed opposite the clause.

(5) A brief explanatory note giving the reasons for any clause of an unusual nature or which differs from the model bill, clauses or standard clauses shall be printed opposite the clause in the bill.

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#### Standing Order 98

##### Map or Plan with Petition

[23rd June, 1887; 10th October, 1903; 22nd March, 1927]. No petition praying for the incorporation of a railway company, or of a canal company, or for an extension of the line of any existing or authorized railway or canal, or for the construction of branches thereto, shall be considered by the Examiner, or by the Committee on Standing Orders, until there has been filed with the

said Examiner a map or plan, showing the proposed location of the works, and each county, township, municipality or district through which the proposed railway or canal, or any branch or extension thereof, is to be constructed.

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### Standing Order 99

#### Maps, Plans and Exhibits with Bills

[23rd June, 1887; 27th March, 1927]. No bill for the incorporation of a railway or canal company or for authorizing the construction of branch lines or extensions of existing lines of railways or of canals, or for changing the route of the railway or of the canal of any company already incorporated, shall be considered by the Railway Committee, until there has been filed with the committee, at least one week before the consideration of the bill a map or plan drawn upon a scale of not less than half an inch to the mile, showing the location upon which it is intended to construct the proposed work, and showing also the lines of existing or authorized works of a similar character within, or in any way the proposed work is intended to serve; and such map or plan shall be signed by the engineer or other person making the same.

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### Standing Order 100

#### Examination of Petitions

(1) [20th December, 1867; 23rd June, 1887; 22nd March, 1927]. The Chief Clerk of Private Bills shall be the Examiner of Petitions for Private Bills.

(2) Petitions for private bills, when received by the House, are to be taken into consideration by the Examiner who shall report to the House in each case the extent to which the requirements of the Standing Orders regarding notice have been complied with; and in every case where the notice is reported by the Examiner to have been insufficient or otherwise defective, or if he reports that there is any doubt as to the sufficiency of the notice as published, the petition, together with the Report of the

Examiner thereon, shall be taken into consideration, without special reference by the Committee on Standing Orders, which shall report to the House as to the sufficiency or insufficiency of the notice, and where the notice is deemed insufficient or otherwise defective, shall recommend to the House the course to be taken in consequence of such deficiency or other defect.

(3) All private bills from the Senate (not being based on a petition which has already been so reported on) shall be first taken into consideration and reported on by the examiner of petitions, and when necessary by the Committee on Standing Orders in like manner, after the first reading of such bills, and before their consideration by any other standing committee.

**472.** The Committee on Standing Orders does not, as a rule, consider petitions which the Examiner of Petitions has found to comply with the law and rules in all particulars. But in case the Examiner finds any irregularity in the petition or in the notices required, the committee take the matter into consideration and may recommend to the House a waiver or suspension of a rule if deemed advisable. B. 584.

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### Standing Order 101

#### Instructions to Committees

[29th March, 1876]. That it be an instruction to all Committees on Private Bills, in the event of promoters not being ready to proceed with their measures when the same have been twice called on two separate occasions for consideration by the Committee, that such measures shall be reported back to the House forthwith, together with a statement of the facts and with the recommendation that such Bills be withdrawn.

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### Standing Order 102

#### Suspension of Rules

[20th December, 1867; 17th May, 1873; 29th March, 1876; 22nd March, 1927]. No motion for the suspension of the standing orders or any rule respecting a petition

for a private bill will be entertained, unless the same has been reported upon by the Committee on Standing Orders, and the Committee in its report shall state the grounds for recommending such suspension.

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### Standing Order 103

#### Introduction of Private Bills

[20th December, 1867.]. (1) All private bills are introduced on petition, and after such petition has been favourably reported upon by the examiner of petitions or by the Committee on Standing Orders, such bills shall be laid upon the table of the House by the Clerk, and shall be deemed to have been read a first time, and to have been ordered for a second reading when so laid upon the table, and recorded in the Votes and Proceedings as having been so read. (2) When Mr. Speaker informs the House that any private bill has been brought from the Senate, the said bill shall be deemed to have been read a first time and ordered for a second reading at the next sitting of the House and recorded in the Votes and Proceedings as having been so read and ordered.

**473.** The signature of a petition must appear on the sheet containing the whole or part of the prayer; it must be in the hand-writing of the party interested. An agent cannot sign for another person except in case of illness.

**474.** A clear day must elapse between the days of presentation and reception of a petition.

On the day following the presentation of a petition, the Clerk of the House lays upon the Table the report of the Clerk of Petitions, and it is then sent, as a matter of course, to the Examiner of Petitions or to the Committee on Standing Orders and it is only after a favourable report from either of them that the Bill can be presented.

**475.** The proceedings of Parliament in passing private Bills partake of both a judicial and legislative character. The promoters of the Bill appear as suitors while those who apprehend injury are admitted as adverse parties to the suit. The former may prove that their own interests will be ad-

vanced by the success of the Bill and no one may urge any objection; yet, if the House apprehends that the Bill will be hurtful to the community, it may be rejected.

**476.** (1) Petitions in favour of, or in opposition to, private Bills may be received at any time while the Bill is under the consideration of the House and its committees, and are referred to the committee on the Bill, without a motion in the House.

No notice is required for a motion to change the promoter of a Public or Private Bill after its introduction because Standing Order 41 the rule requiring notice does not apply to Bills after they have been introduced nor to Private Bills. C.J., Vol. 18, p. 238.

(2) When the usual time for receiving petitions has expired, the parties interested in a private Bill may present a petition praying to be permitted to lay before the House a petition for the passing of the necessary Act notwithstanding the expiration of the time for bringing up petitions for private Bills. It is usual to allow such a petition and refer it to the Committee on Standing Orders. B. 587.

(3) The Committee on Standing Orders does not consider a petition until the Examiner's report has been placed before the committee. It must wait for that report.

(4) After an unfavourable report from the committee on the Bill, the House has, in a few instances, referred petitions back to the Committee on Standing Orders, with an instruction to consider and report as to the expediency of suspending the Rule. In one case only was their report favourable; and though in this instance the Rule was suspended, and a Bill introduced, it was subsequently abandoned.

**477.** It has occasionally happened, that after certain petitions have been unfavourably reported on, further evidence has been produced, sufficient to satisfy the committee. In such cases they have made a further report, amending the former one, and representing either that the notice has since been continued so as to complete the full time required, or that it has been amended so as to meet the requirements of the Rule, or that the evidence subsequently adduced proves that the notice was sufficient for all parties concerned.

**478.** The committee on the Bill has no power to entertain questions in reference to the compliance with the Standing Orders, (which pertains solely to the Standing Orders Commit-

tee) unless by special order from the House. This order is only given when the House, on the report of the Standing Orders Committee, allow parties to proceed with their Bill on complying with certain Standing Orders which they had previously neglected.

**479.** Parties desirous of opposing any Bill before a committee, either on the preamble or the details, present a petition, stating the grounds of their opposition. No such petition can be entertained that does not distinctly specify the grounds on which the petitioners object to the Bill or any of its provisions. The petitioners can only be heard on the grounds so stated, and if the same are not specified with sufficient accuracy, the committee may direct a more specific statement to be given in writing, but limited to the grounds of objection which had been inaccurately specified. No petitioners will be heard against the preamble, unless in their petition they pray to be heard against it. If no parties, counsel, or agent, appear on behalf of a petition when it is read, the opposition of the petitioner is held to be abandoned.

**480.** All petitions for or against a Bill are laid before the committee, and the petitioners, either by themselves or their agents will be present to promote their respective interests. Unless petitioners pray to be heard against the preamble they will not be entitled to be heard nor to cross-examine any of the witnesses of the promoters upon the general case, nor otherwise to appear in the proceedings of the committee until the preamble has been disposed of. A general prayer against the preamble will not entitle the petitioner to be heard against it if his interest be merely affected by certain clauses of the Bill.

**481.** Petitioners are said to have no *locus standi* before a committee when their property or interests are not directly and especially affected by the Bill, or when, for other reasons, they are not entitled to oppose it. Of this the committee is to be the judge.

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#### Standing Order 104

##### Letters Patent or Agreements

[20th December, 1867; 22nd March, 1927]. When any bill for confirming any agreement is presented to the House, a true copy of such agreement must be attached to it.



## Standing Order 105

## Bills Referred

[20th December, 1867; 17th May, 1873; 29th March, 1876; 22nd March, 1927]. Every private bill, when read a second time, is referred to one of the Standing Committees as follows: Bills relating to banks, insurance, trade and commerce and to trust and loan companies, to the Committee on Banking and Commerce, bills relating to railways, canals, telegraphs, canal and railway bridges, to the Committee on Railways, Canals and Telegraph Lines; the bills not coming under these classes to the Committee on Miscellaneous Private Bills, and all petitions for or against the bills are considered as referred to such Committee.

**482.** The second reading of a private Bill corresponds with the same stage in other Bills, and in agreeing to it the House affirms the general principle, or expediency, of the measure. There is, however, a distinction between the second reading of a public and of a private Bill, which should not be overlooked. A public Bill being founded on reasons of state policy, the House, in agreeing to its second reading, accepts and affirms those reasons; but the expediency of a private Bill, being mainly founded upon allegations of fact, which have not yet been proved, the House, in agreeing to its second reading, affirms the principle of the Bill, conditionally, and subject to the proof of such allegations before the committee. Where, irrespective of such facts, the principle is objectionable, the House will not consent to the second reading; but otherwise, the expediency of the measure is usually left for the consideration of the committee. This is the first occasion on which the Bill is before the House otherwise than *pro forma* or in connection with the Standing Orders; and if the Bill be opposed, upon its principle, it is the proper time for attempting its defeat.

**483.** "The House does not profess to decide upon the second reading as to the truth or otherwise of the allegations of fact upon which a proposed Bill is based, and in conceding a second reading to a private Bill, the House is regarded as merely giving its sanction to its general principle on the hypothesis that the committee to which it is afterwards referred finds those allegations proved. It is usual, therefore, to allow a

second reading, except where the Bill enunciates some principle which the House is not prepared to affirm." (Dodd & Wilberforce.)

**484.** Until April 17, 1950, Standing Order 105 (formerly 104) was interpreted as meaning that a motion had to be made to refer a private Bill to one of the Standing Committee. On that date Speaker Macdonald refused to accept that interpretation. He said: "As the Prime Minister has so well pointed out, Standing Order 104 (now 105) makes it obligatory to refer a Private Bill, once it has received second reading, to one of the Standing Committees. It has been the practice in the House to put the motion, but this is merely procedural and the motion is not debatable (it was debatable if it stood on the orders of proceeding for the day). It has however been the practice to put the motion. However, it is not necessary to put the motion as such a Bill must be referred to one of the Committees. I believe I should follow the suggested procedure; and I think it would expedite proceedings in the House on all private Bills if, beginning to-day and for the future, when a private Bill has received second reading the Speaker were to refer it to one of the Standing Committees. I rule accordingly." C.J., M., p. 235. The House accepted that ruling.

**485.** (1) Under our practice an order for resuming the adjourned debate on the second reading of a private member's Bill is proceeded with only at the request of the sponsor of the Bill or a member authorized to act on the sponsor's behalf. A member of the government who has introduced a Bill should be accorded and is, under our practice, accorded an equal right. It is also our practice to allow a Bill to stand when the member who has sponsored it is not present though he may not have authorized another member to act on his behalf. In other words, the absent member is deemed to have asked that the Bill stand until the next sitting day. C.J., 92, pp. 570, 571.

(2) The House cannot, on an amendment to the motion for the second reading of a private Bill, propose an alleged improvement in public laws. When a Bill entitled "An Act respecting The Bell Telephone Company of Canada" was under consideration, on April 30, 1948, a member moved that it be not now read a second time but that it be resolved that no company should ask Parliament for an increase in authorized capital in excess of one hundred per cent. The amount was ruled out of order on the ground that it contained a general

declaration of principle which would have such a binding character on the House that it should not be moved as an amendment to the second reading of a private Bill. C.J., Vol. 84, p. 407.

**486.** Mr. J. W. Lowther, Chairman of Committees of Ways and Means, of the British House, speaking on the subject on February 25th, 1926, said: "The rule which the House had generally followed, and, he thought, very wisely, had been to allow the second reading of private Bills to go through unless any strikingly new principle happened to be enunciated therein, and in such cases the House must pause before it accepts the principle".

**487.** When the principle of the Bill is one of novelty which appears to any considerable body of members objectionable, a division is usually taken against the second reading, or some instruction is moved to modify the portion of the Bill objected to. D. & W. 20.

**488.** If the second reading be deferred for three or six months, or if the Bill be rejected, no new Bill for the same object can be offered until the next session. M. 710-11. Standing Order 94 of the Canadian House provides that a copy of the proposed private Bill shall be deposited with the Clerk not later than the first day of each session.

**489.** The parties desirous of opposing a private Bill in committee should present a petition against it in the Private Legislation Branch after the first reading. Any contest as to the *locus standi* (right to appear) of the petitioners must be settled by the Chief of the Private Legislation Branch before the petition is submitted to the committee.

**490.** If the promoters of the Bill intended to object to the right of opposing petitioners to be heard against the Bill, they should give notice of their intention and of the grounds of their objection to the Chief of the Private Legislation Branch and to the opposing petitioner's agents, after the promoters' petition has been received; in other words, the issues must be joined before the committee hears the evidence, for the passing of a private Bill is similar to the trial of a common law case before a Court of Justice.

## Standing Order 106

(1) [10th December, 1867; 17th May, 1872; 29th March, 1876; 22nd March, 1927]. No Committee on any private bill originating in this House is to consider the same until after one week's notice of the sitting of such Committee has been first affixed in the lobby; nor, in the case of any such bill originating in the Senate, until after twenty-four hours' like notice.

(2) On the day of the posting of any bill under this standing order, the Clerk of the House shall cause a notice of such posting to be appended to the printed Votes and Proceedings of the day.

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## Standing Order 107

## Voting in Committee

[20th December, 1867]. All questions before Committees on private bills are decided by a majority of voices including the voice of the Chairman; and whenever the voices are equal, the Chairman has a second or casting vote.

**491.** (1) The names of the members attending each committee are entered by the Committee Clerk in the minutes; and when a division takes place, the Clerk takes down the names of the members, distinguishing on which side of the question they respectively vote; and such lists are to be given in, with the report, to the House. M. 769.

(2) When a committee cannot meet for want of a quorum, the attention of the House may be called to the fact, and its interposition invoked. In such a case, the House will order: That the committee be revived and that leave be given to sit and proceed on a certain day. Or the House may order: That the committee have leave to sit and proceed with two or more members, in case there is no likelihood of a quorum.

**492.** If a committee adjourn, without naming another day for resuming their sittings; or if, from the absence of a quorum, the committee be unable to proceed to business or to adjourn to a future day, they have no power of reassembling without an order from the House, giving the committee leave to sit and proceed on a certain day. M. 802.

**493.** "The conduct of the business before the committee is regulated as the committee may think most convenient, but the ordinary course is, for the counsel in support of the Bill to explain the proposed measure, and then produce his evidence in its support, and for the counsel for the opponents afterwards to open their grounds of objection, and then bring forward their evidence, each side testing by cross-examination those of his opponent's witnesses whose evidence he desires to minimize or discredit, and for the counsel producing the witness to re-examine upon such cross-examination." (Dodd & Wilberforce, p. 26.)

**494.** At each sitting, a list of the Bills which are ready for consideration is laid before the committee, in the order of their reference; and they are usually taken up in that order, unless it may be otherwise agreed upon, for the convenience of parties in attendance. In the case of opposed Bills, it is customary for the parties to come to an arrangement in the Private Bill Office for the selection of a particular day for the consideration of a Bill in which they are interested; and the Bill, in such a case, takes precedence of all other Bills appointed for that day: where no such arrangement is made, the Bill is taken up in its order. It has been stated above that no Bill, of which notice by advertisement is required by the Rules, can be considered until due notice has been given by the committee.

**495.** When the committee are about to proceed to the consideration of a private Bill, the parties are called in, and the preamble is read; this being different from the practice in regard to public Bills, the preamble of which is postponed until after the consideration of the clauses. (Instances may, however, arise, in which the committee may feel it desirable that they should reserve their judgment upon the preamble until certain details of the Bill have been settled: in such a case they postpone the preamble until after the consideration of the clauses; but this is of very rare occurrence.) The petitions against the Bill are then read, and appearances entered upon each petition with which the parties intend to proceed.

**496.** (1) The promoters (or their counsel) first state their case on the preamble, and then (if required) proceed to call witnesses, and to examine them. At the conclusion of this examination, when the counsel or agent for any petitioner

risers to cross-examine a witness is the proper time for taking objections to the *locus standi* of such petitioner. It is necessary that a petitioner should state the manner in which his interest is affected, in order that he may obtain a *locus standi* at all in opposition to the measure; but the grounds of objection to the Bill on which he may be heard in support of such opposition are not confined to those arising immediately out of his private interests. (Petitioners are said to have no *locus standi* before a committee, when their property or interests are not directly and specially affected by the Bill, or when for other reasons, they are not entitled to oppose it.)

(2) If the committee decide in favour of his *locus standi*, he may address the committee, and produce his witnesses, and they in their turn are cross-examined by the counsel for the promoters, who has the right to reply. The committee may, if they please, hear petitioners against a Bill on the ground of competition; but shareholders of a company promoting a Bill are not heard in opposition unless their interest be distinct from that of the company.

(3) A petitioner whose interest is affected only by particular clauses in the Bill, which are immaterial to the main objects of the measure, and are not referred to in the preamble, would have no right to be heard against the preamble, but only against such clauses.

**497.** It is in the power of the committee to make alterations in the preamble, either by striking out or modifying such allegations as may not have been substantiated to their satisfaction, or by expunging such as the promoters may be desirous of withdrawing; but no new allegations or provisions ought to be inserted, either in the preamble or the bill, excepting such as are covered by the petition and the notice, as proved before the Standing Orders Committee—unless the parties have received permission from the House to introduce such additional provisions, in compliance with a petition for leave. Every material alteration in the preamble must be specially reported to the House, with the reasons therefor.

**498.** The Committee on a bill have no authority to make any amendments therein which may involve an infraction of the Standing Orders, or which may affect the interests of the parties interested, without due notice having been given to the same. The Committee have sometimes with the consent of the parties made very material alteration in a bill and in all such

cases they will report the fact to the House. Can. Com. J. 1867-8, p. 212.

**499.** When it may be found necessary to insert, in a private bill, a clause affecting the public revenue, property, or credit, the authority therefor must (with the consent of the Government) emanate from a committee of the whole: thus, in 1866, the Canada Vine Growers' Association having applied for an Act of incorporation, a bill was introduced and proceeded with in the ordinary way; and the consent of the Government having been obtained, a Resolution (originating in Committee of the Whole) was passed by the House, exempting the wines made by the Association from excise duties for a term of ten years; and the Resolution was referred to the Committee of the Whole on the bill, to make the necessary provision therein. In 1867-8, the exemption was extended for a further period of two years—the same course being taken as before.

**500.** The promoters of a bill may be heard by counsel if they desire it. Petitions against the preamble or any of the clauses may be heard by counsel, if, in their petition, they have prayed to be heard by themselves, their counsel, or agent. No member can act as counsel before the House or before any committee; nor can any member of either House act as counsel before the other House, on any bill depending therein, without special permission: when such permission is given it is understood that the gentlemen who receive it would not be permitted to vote on such bill, if it should be received by the House of which they are members.

**501.** When counsel are addressing the committee, or while witnesses are under examination, the committee room is an open court; but when the committee are about to deliberate, all the counsel, agents, witnesses, and strangers are ordered to withdraw, and the committee sit with closed doors. When they have decided any question, the doors are again opened, and the chairman acquaints the parties with the determination of the committee, if it concerns them.

**502.** Members of the House who are not on the committee, have a right to be present during the examination of witnesses, but not to interfere in the proceedings. It is doubtful how far the committee has a right to exclude them from the room when cleared for discussion, but it is always customary for them to retire.

If any member insist on his right to remain, against the wish of the committee, their only course is to report the circumstances of the case to the House. If a member of the House be under examination as a witness, and the matter under consideration shall have arisen out of his evidence, the right of the committee to exclude him from the room during the discussion is less doubtful.

**503.** It is open to any member of the committee to ask of the witnesses any question he may think fit, or make any inquiry of the counsel engaged. The chairman, unless his ruling is challenged by some other member of the committee, decides as to whether evidence offered by one side and objected to by the other should be received by the committee. If it is so challenged, the committee, if the challenge is persisted in, have to vote upon the matter.

**504.** When the committee have completed their inquiry, it is the duty of their chairman, in all cases, to report the bill to the House." (Dodd & Wilberforce, p. 27.)

**505.** If the attendance of a member of the House be required as a witness, the proper course is for the chairman to write to the member requesting his attendance; if he refuses to attend, the fact is reported to the House, in order that they may take such steps in the matter as they see fit.

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### Standing Order 108

#### Provisions not Covered by Notice

[20th December, 1867; 22nd March, 1927]. It is the duty of the Committee to which any private bill may be referred by the House, to call the attention of the House specially to any provision inserted in such bill that does not appear to have been contemplated in the notice or petition for the same, as reported upon by the Examiner or Petitions or by the Committee on Standing Orders; and any Private Bill so reported shall not be placed on the Order Paper for consideration in Committee of the Whole until a report has been made by the Examiner as to the sufficiency or otherwise of the notice to cover such provisions.



## Standing Order 109

## All Bills to be Reported

[20th December, 1867; 22nd March, 1927]. The Committee to which a private bill may have been referred shall report the same to the House in every case.

**506.** Every bill referred to the committee must be reported. If the promoters of any bill inform the committee that they do not desire to proceed further with it, the fact is reported to the House, and the bill will be ordered to be withdrawn; or if any other parties before the committee, either as petitioners or opponents of the bill, desire to proceed with it, the committee may permit them to do so.

In case the committee do not report with reference to a bill, the House should take cognizance of the matter. B. 614.

It is the duty of every committee to report to the House the bill that has been committed to them, and not by long adjournments to withhold from the House the result of their proceedings; and therefore it has been prescribed by Standing Order that every committee on an opposed private bill shall report specially to the House the cause of any adjournment over any day on which the House shall sit. If any attempt of this nature be made to defeat a bill, the House will interfere to prevent it. Thus, in 1825, the committee on a private bill having adjourned for a month, was "ordered to meet to-morrow, and proceed on the bill"; and again, on the 23rd March, 1836, the House being informed that a committee had adjourned till 16th May, ordered them "to meet to-morrow, and proceed on the bill." M. 801-2.

If the Committee are of opinion that the bill falls under that class which require the consent of the Governor-General before its passage, they will report the fact to the House; and the consent will be signified by a Privy Councillor at a future stage of the proceedings. B. 613.

In cases when the Committee have considered an amendment of the general law preferable to the passage of certain private bills, they have occasionally made a special report to that effect, and postponed the consideration of the bills to which it had reference to enable the House to take action in the matter; or they have expunged certain provisions, and recommended an amendment of the general law in these respects. B. 611.

**507.** Sometimes a Committee, in cases of doubt, have asked instructions from the House as to the course they should take with reference to the bill before them. B. 612, 613.

When the Committee have found it advisable to alter the title of the bill they will report the fact to the House, and it will be amended on the motion for the final passage. B. 613.

**508.** If a Committee find that a bill should more properly, or would more conveniently be considered by another Committee, they will make a recommendation to that effect, and it will be so referred. B. 613.

**509.** It will frequently be necessary for the Committee to order that the bill be reprinted, as amended, and this is done at the expense of the promoters.

**510.** In the event of the expiry of the hour for private bills, the Chairman will on rising report to the House such bills as have been disposed of by the Committee and the bill under discussion at the expiry of the hour shall retain its place on the Order Paper for the next sitting of the Committee. B. 617.

**511.** Bills which may be fixed for consideration in committee on the same day, whether in progress or otherwise, may be referred together to a Committee of the whole House, which may consider on the same day all the bills so referred to it, without the Chairman leaving the chair on each separate bill; provided that, with respect to any bill not in progress, if any member shall object to its consideration in committee, together with other bills, the order of the day for the Committee on such bill shall be postponed. S.O. 33, British H. of C.

**512.** Bills may be referred back for reconsideration. The same rule applies for private as for public bills. When the reference for reconsideration is made any instruction which the House deems necessary may be given to the standing or special Committee which has reported the bill.

**513.** When a bill comes from a Committee with extensive amendments affecting private rights and interests, it is the practice now in the English House to refer the bill as amended to the examiner to enquire whether the amendments involve any infraction of the Standing Orders. If he reports there is no infraction, the bill proceeds without interruption, but if he reports that there has been an infraction, then his report together with the bill goes to the Standing Orders Committee.

It will be seen from Canadian precedents that an analogous practice has obtained in this House. B. 612.

**514.** The practice has prevailed of late years, in the Lower House, in the consideration of private bills in Committee of the Whole, of not treating the amendments made by the Select Committee as amendments, but considering the bill, as amended, as a whole; thus in reporting the bill to the House, the Chairman refers only to the amendments made in Committee of the Whole. Bills from the Senate form a necessary exception to this practice, as every amendment made to the bill as sent down from that House must be communicated to the House of Commons for its concurrence.

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#### Standing Order 110

#### Preamble not Proven

[20th December, 1867; 17th May, 1873; 22nd March, 1927]. When the Committee on any Private Bill report to the House that they have made any material change in the preamble of a bill, the reasons for making such change shall be stated in their report; and if they report that the preamble of a bill has not been proved to their satisfaction, they must also state the grounds upon which they have arrived at such a decision; and no bill, the preamble of which has been reported as not proven, shall be placed upon the Orders of the Day unless by special order of the House.

**515.** Committees have reported against bills on the following grounds: no sufficient evidence offered in favour of the preamble; antagonistic evidence; no proof of the consent of the parties interested; the petitions against the measure being as numerous as, or even more numerous than, those in its favour; a great difference of opinion in the locality affected as to the expediency of the measure; legislative interference not being desirable or necessary; the bill would interfere with lawsuits pending or with existing rights; the power sought would not advance the interest of the locality; the bill asking for an extension of the powers of a certain company to purposes entirely foreign to its original charter; most unusual provisions; the provisions of a General Act affording sufficient facilities to the promoters to obtain the powers asked for.

**516.** It has been ruled in the English House that when a select committee has resolved that the preamble in a private bill has not been proved and ordered the chairman to report, it is not competent for the Committee to reconsider and reverse its decision, but the bill should be recommitted for the purpose. Consequently the correct procedure in all analogous cases is for the House to give the Committee instructions which will enable it to consider the whole question again.

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### Standing Order 111

#### Chairman to Sign Bill and Amendments

[20th December, 1867; 22nd March, 1927, 12th July, 1955]. The Chairman of the Committee shall sign with his name at length a printed copy of the Bill, and shall also sign with the initials of his name, the preamble and the various sections of the Bill and also any amendments which may be made or clauses added in Committee; and another copy of the Bill with the amendments (if any) written thereon shall be prepared by the Clerk of the Committee, who shall sign the Bill with his name at length and shall also sign with the initials of his name the preamble and the various sections adopted by the Committee, and any amendments which may have been made thereto, and shall file the same with the Clerk of the House or attach it to the Report of the Committee.

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### Standing Order 112

#### Notice of Amendment

[20th December, 1867]. No important amendment may be proposed to any private bill, in a Committee of the whole House, or at the third reading of the bill, unless one day's notice of the same has been given.

**517.** It is the correct course, in all cases where it is necessary to make material amendments, to refer the bill back to the Select Committee, to which it had been previously sent, instead of considering the proposed changes in Committee of the Whole.

Amendments made in Committee of the Whole must, when reported, be read a second time and concurred in. S.O. 78(2).

The amendment can be moved only by the member in whose name it stands upon the notice paper.

A member who has given notice of an amendment is not entitled to precedence on that account or to be heard before a member rises to speak to the question.

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### Standing Order 113

#### Reprinting of Bills when Amended

[22nd March, 1927]. Private bills amended by any Committee may be reprinted by order of such Committee; or after being reported, and before consideration by a Committee of the Whole House, may be reprinted in whole or in part as the Clerk of the House may direct; and the cost of such reprinting shall, in either case, be added to the cost of the first printing of the bill and be payable by the promoter of the same.

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### Standing Order 114

#### Amendments by the Senate

[20th December, 1867]. When any private bill is returned from the Senate with amendments, the same not being merely verbal or unimportant, such amendments are, previous to the second reading, referred to the Standing Committee to which such bill was originally referred.

**518.** If the Committee report favourably the amendments will be immediately read a second time and agreed to, and returned with the usual message. If the Committee report that the amendments should be disagreed to for certain reasons, the House will consider the amendments forthwith, and having read them a second time will disagree to those on which the Committee have reported unfavourably for the reasons set forth in their report. The House will then "insist" or "not insist" on their amendments when the message is received that the other House disagrees to them. B. 623, 624.

The Committee may recommend that certain amendments be made to the Senate amendments. Can. Com. J. 1886, 255, 270.

**519.** When a Committee charged with private bills has reported in favour of extending the time for depositing with the Clerk the copy of a bill, it is the duty of the Chairman to make a formal motion in the House in accordance with the recommendation. This motion may also extend the time for receiving reports from Committees. B. 586.

**520.** "So far the maxim is certainly true and founded on good sense that as it is always in the power of the majority by their numbers to stop any improper measures proposed on the part of their opponents, the only weapon by which the minority can defend themselves from similar attempts from those in power are the forms and rules and proceedings which have been found necessary from time to time and are become the Standing Orders of the House, by a strict adherence to which the weaker party can alone be protected from those irregularities and abuses which these forms were intended to check, and which the wantonness of power is but too often apt to suggest to large and successful majorities." Hatsell.

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#### Standing Order 115

##### Record

[20th December, 1867; 29th March, 1876; 22nd March, 1927; 12th July, 1955]. A record shall be kept in the private bills office of the name, description, and place of residence of the parties applying for a private bill or of their agent, the amount of fees paid, and all the proceedings thereon, from the time of the deposit of the bill with the Clerk of the House to the passing of the bill; such record to specify briefly each proceeding in the House or in any committee to which the bill or the petition may be referred, and the day on which the committee is appointed to sit; such record shall be open to public inspection during office hours.

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#### Standing Order 116

##### Lists of Bills

1. [20th December, 1867; 29th March, 1876; 22nd March, 1927]. Lists of all Private Bills which have been

referred to any Committee shall be prepared daily by the Chief Clerk of Private Bills, specifying the Committee to which each bill has been referred and the date on or after which the bill may be considered by such Committee, and shall cause the same to be hung up in the lobby.

2. A list of committee meetings shall be prepared from time to time as arranged, by the Chief Clerk of Private Bills, stating the day and hour of each such meeting, and the room in which it is to be held, which list shall be attached to the Votes and Proceedings from day to day; and a list of committee meetings to be held each day shall be hung up in the lobby on the day previous to that on which the meeting is to be held.

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#### Standing Order 117

##### Parliamentary Agents

(1) [20th December, 1867; 10th July, 1906; 22nd March, 1927]. No person shall act as parliamentary agent conducting proceedings before the House of Commons or its Committees without the express sanction and authority of Mr. Speaker, and all such agents shall be personally responsible to the House and to Mr. Speaker, for the observance of the rules, orders and practice of Parliament and rules prescribed by Mr. Speaker, and also for the payment of all fees and charges.

(2) A list of such persons shall be kept by the Chief Clerk of Private Bills and a copy filed with the Clerk of the House.

(3) No person shall be allowed to be registered as a parliamentary agent during any session unless he has paid a fee of twenty-five dollars for such session and is actually employed in promoting or opposing some private bill or petition pending in Parliament during that session.

**521.** (1) Members may not be agents; and no officer or clerk of the House is allowed to transact private business before the House, for his emolument or advantage, either directly or indirectly. M. 693, B. 582.

(2) It is the practice of the Canadian Commons for members to take charge of private Bills and to promote their progress through the House and its Committees, but it is

contrary to the law and usage of Parliament that any member of the House should be permitted to engage, either by himself or any partner in the management of private Bills before this or the other House of Parliament for pecuniary reward. B. 581.

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### Standing Order 118

#### Liability of Agents

[20th December, 1867]. Any parliamentary agent who wilfully acts in violation of the standing orders and practice of Parliament, or of any rules to be prescribed by Mr. Speaker, or who wilfully misconducts himself in prosecuting any proceedings before Parliament, shall be liable to an absolute or temporary prohibition to practice as a parliamentary agent, at the pleasure of Mr. Speaker; provided, that upon the application of such agent, Mr. Speaker shall state in writing the ground for such prohibition.

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### Standing Order 119

#### Unprovided Cases

[10th July, 1906]. Except as herein otherwise provided, the rules relating to public bills shall apply to private bills.



**PART III**  
**CHAPTER XVII**  
**THE LIBRARY**

CATALOGUE.  
ACCESS TO, DURING SESSION.  
LOAN OF BOOK.  
MEMBERS BORROWING BOOKS.  
OTHER PERSONS BORROWING BOOKS.  
BOOKS OF REFERENCE.  
REPORT OF BOOKS ABSENT.  
SUBSCRIPTION FOR NEWSPAPERS.

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**STANDING ORDERS**

120. A proper catalogue of the books belonging to the library shall be kept by the Parliamentary Librarian, in whom the custody and responsibility thereof shall be vested, and who shall be required to report to the House through Mr. Speaker, at the opening of each session, the actual state of the library.

121. No person shall be entitled to resort to the library during a session of parliament, except the Governor General, the members of the Privy Council and of the two Houses of Parliament, the officers of both Houses; and such other persons as may receive a written order of admission from the Speaker of either House. Members may personally introduce strangers to the library during the day-time, but not after the hour of seven o'clock, p.m.

122. During the session of Parliament, no books belonging to the library shall be taken out of the building, except by the authority of the Speaker, or upon a receipt given by a member of either House.

123. During the recess of Parliament, the library and reading room shall be open every day in each week, Sundays and holidays excepted, from the hour of ten in the morning till four in the afternoon; and access to the library shall be permitted to persons introduced by a member of either House, or admitted at the discretion of the Clerk or the Parliamentary Librarian, subject to such regulations as may be deemed necessary for the security and preservation of the collection; but no one shall be allowed to take any book out of the library, except members of either House, and such others as may be authorized by the Speaker of either House.

124. During the recess of Parliament, no member of either House, not residing at the seat of government, shall be at liberty to borrow or have in his possession, at any one time, more than three works from the library; or to retain the same for a longer period than one month.

125. No other persons who may be privileged by card from the Speaker of either House to borrow books from the library, shall be allowed to have in their possession more than two works at any one time, or to retain the same longer than three weeks; and all such persons shall return the books so taken when required by the Parliamentary Librarian.

126. No books of reference, or books of special cost and value, may be removed from the seat of government under any circumstances.

127. At the first meeting of the Joint Library Committee at every session of Parliament the Parliamentary Librarian shall report a list of the books absent at the commencement of the session, specifying the names of any persons who have retained the same in contravention of either of the foregoing rules.

128. The Parliamentary Librarian is authorized to subscribe for the newspapers published in the Dominion, and for such other papers, British and foreign, as may, from time to time, be directed by the Speaker.

## ANNOTATIONS

**522.** (1) The library is also governed by the Library of Parliament Act, under which all books, paintings, maps, and other effects in the joint possession of the Senate and House of Commons are vested in His Majesty for the use of both Houses of Parliament; the direction and the control of the library, and of the officers and servants connected therewith shall be vested in the Speaker of the Senate and the Speaker of the House assisted by a joint Committee to be appointed by the two Houses, and these may from time to time make such orders and regulations for the government of the library, and for the proper expenditure of moneys voted by Parliament for the purchase of books, maps or other articles to be deposited therein, as to them seem meet, subject to the approval of the two Houses of Parliament.

(2) The Parliamentary Librarian is appointed under the terms of the following Act of Parliament:

Chapter 35, 3-4 Elizabeth. Assented to 28th June 1955.

Section 5(a) of the Library of Parliament Act, Ch. 166, R.S.C. 1952, is repealed and the following substituted therefor:

1. 5(1). The Governor in Council may by commission under the Great Seal appoint a Parliamentary Librarian to hold office during pleasure.

(2) The Parliamentary Librarian has the rank of a deputy head of a Department and, subject to Section 3, has the control and management of the Library.

(3) The Governor in Council may by commission under the Great Seal appoint an Associate Parliamentary Librarian to hold office during pleasure who, in addition to any duties defined in respect of his office under Section 9\* shall execute and perform the duties and function of Parliamentary Librarian during his absence, illness or other incapacity or during a vacancy in the office of Parliamentary Librarian.

(4) This Act shall come into force when a vacancy in the office of either the General or Parliamentary Librarian under the Library of Parliament Act first occurs after the passing of this Act, and the General Librarian or Parliamentary Librarian, as the case may be, then in office, shall be deemed to have been appointed Parliamentary Librarian under the Library of Parliament Act as amended by this Act.

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\* This section deals with the staff of the Library.

Section 5 of the Library of Parliament Act which was repealed by the above enactment read as follows:

"There shall be two Librarians, one of whom shall be called the General Librarian and the other of whom shall be called the Parliamentary Librarian, who shall be appointed by joint commission under the Great Seal as Librarians of Parliament, and shall hold office during pleasure.

**523.** There are at present about 300,000 volumes in the Library of Parliament. At Confederation the number was approximately 55,000. Not until 1876 was the Library building ready for occupation and by that time roughly 85,000 books were moved into the new structure.

The transfer of so many volumes from Quebec to Ottawa was a problem to the Joint Library Committee and especially to that renowned authority on Canadian constitutional practice, Dr. Alpheus Todd, who had held the position of Assistant Librarian and Librarian in Toronto, Quebec and Ottawa for over 40 years. Finally it was decided to bring the books to the federal capital in barges. There was a depth of 9 feet of water in the Carillon-Gravelle canal constructed 40 years before, and all that the forwarding agent had to do was to take care that the barges were not overloaded. The transportation contract was awarded to "La Compagnie des Remorqueurs du St. Laurent" at a price of \$7,000. Before the removal from Quebec Dr. Todd, under instructions from the Library Committee, sent a note of appreciation to the Rector of Laval University, Mgr. E. Taschereau, later to become Cardinal Taschereau, for the hospitality extended by the University in housing free of charge many hundred volumes for which there was not room in the Legislative Building. Accompanying the letter was an orrery, an astronomical instrument which represented the revolution of the planets round the sun, as also their relative size, distances, orbits, etc. There was in addition a list of 50 books which it was thought would be of use to the University which the Joint Committee also donated. Mgr. Taschereau made a graceful response to Dr. Todd's letter and remarked in closing, "I must avail myself of this opportunity to express to you our entire satisfaction with the conduct of the several employees who were entrusted with the care of this part of your library the past six years."

Notwithstanding the lateness of the season (early in November, 1865), the barges arrived at Ottawa without difficulty. The Library building was not completed and Dr. Tood and his assistants found it impossible to unpack the books until several months after their arrival in Ottawa. All sorts of temporary accommodation had to be devised in the meantime, and it was well on in the summer before the new building could be occupied.

**524.** Prior to Confederation the old Province of Canada did not report the debates of either the Assembly or the Legislative Council but the Library of Parliament has made a compilation from the newspapers of 1846 entitled "Reynold's Mirror of Parliament", and also "Thompson's Canadian Mirror of Parliament" for 1860. Then, John Batton, editor of the "Ottawa Times" made a similar compilation for the sessions of 1870, 1871 and 1872 and had them printed in permanent form.

The Senate printed an official report of its debates from 1871 to 1917 when it appointed an official staff of reporters. The House of Commons started a contract system in 1874 but only appointed an official staff in 1882. The gaps in the debates reports from 1854 until printed volumes were adopted have been filled by the Library staff in scrapbook form, so that a good record is available.



## CHAPTER XVIII

### FORMS AND FORMULAE

MOTIONS.  
AMENDMENTS.  
PETITIONS.  
NOTICES.  
FORMULAE USED BY MEMBERS, DEPUTY SPEAKER AND SPEAKER.

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#### MOTIONS

##### No. 1

##### For the Election of the Speaker

That ..... Esquire, member for the Electoral District of ....., do take the Chair of this House as Speaker.

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##### No. 2

##### For the Address in Reply to the Speech from the Throne

That the following Address be presented to His Excellency the Governor-General to offer the humble thanks of this House to His Excellency for the gracious speech which he has been pleased to make to both Houses of Parliament, namely:

To His Excellency, the Most Noble ..... (here cite all the titles of the Governor-General.)

May it please your Excellency:

We, His Majesty's most dutiful and loyal subjects, the House of Commons of Canada, in Parliament assembled, beg leave to offer our humble thanks to Your Excellency for the gracious speech which Your Excellency has addressed to both Houses of Parliament.

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##### No. 3

##### For Giving Precedence to Debate on Address in Reply to Speech from the Throne

That the Order for the consideration of the motion for an Address to His Excellency the Governor-General in reply to his Speech at the opening of the Session, have precedence over all other business, except introduction of Bills, until disposed of.

## No. 4

**For Engrossing and Presenting to His Excellency the  
Address in Reply to the Speech from the Throne**

(Immediately after the Address in Reply to the Speech from the Throne has been adopted, the following motion is made):

That the said Address be engrossed and presented to His Excellency the Governor-General by such members of this House as are of the Honourable the Privy Council.

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## No. 5

**For the Election of the Deputy Speaker**

That ..... Esquire, Member for the Electoral District of ..... be appointed Chairman of Committees of the Whole House.

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## No. 6

**For the Appointment of the Selection Committee under S.O. 65**

That a Special Committee be appointed to prepare and report with all convenient speed lists of members to compose the Standing Committees of this House, under S.O. 65, said Committee to be composed of .....

(If it is found advisable to increase the number of members of this Special Committee, the following words are added:)

And that that portion of S.O. 65 limiting the number of members of the said Committee be suspended in relation thereto.

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## No. 7

**For Concurrence in the Report of the Selection Committee  
Appointed under S.O. 65**

That this House doth concur in the Report of the Special Committee appointed to prepare and report, with all convenient speed, Lists of Members to compose the Standing Committees of this House, during the present session, presented this day.



## No. 8

**For Giving Authority to the Standing Committees**

(When motion No. 7 has been adopted, the following is made:)

That the Standing Committees of this House shall severally be empowered to examine and inquire all such matters and things as may be referred to them by the House; and to report from time to time their observations and opinions thereon; with power to send for persons, papers and records.

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## No. 9

**For Fixing the Quorum of a Committee**

That the quorum of the Select Standing (or Special) Committee on ..... do consist of five (or any number) members.

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## No. 10

**For the Formation of the Joint Committee on Printing**

That a Message be sent to the Senate, to acquaint their Honours that this House will unite with them in the formation of a Joint Committee of both houses on the subject of the Printing of Parliament, and that: Messieurs ..... will act as Members, on the part of this House, of the said Joint Committee.

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## No. 11

**For the Formation of the Joint Committee on the Library**

That a Message be sent to the Senate, informing their Honours that this House has appointed Messieurs: ..... a Committee to assist His Honour the Speaker in the direction of the Library of Parliament so far as the interests of the House of Commons are concerned, and to act on behalf of the Houses on the Library.

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## No. 12

**For the Formation of the Joint Committee on the Restaurant**

That Messrs. .... be appointed to assist Mr. Speaker in the direction of the Restaurant, as for as the interests of the

House of Commons as members of a Joint Committee of both Commons are concerned, and to act as Members of a Joint Committee of both Houses on the Restaurant; and that a Message be sent to the Senate to acquaint their Honours therewith.

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### No. 13

#### For the Appointment of a Joint Committee

That a Committee to be composed of members of both Houses be appointed to examine and report upon ..... and that Messrs. .... be members of such Committee on the part of this House.

That a Message be sent to the Senate requesting them to unite with this House for the above purpose and informing them that this House has selected some of its members to act on the said proposed Committee, namely Messrs. ....

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### No. 14

#### For Concurring in the Appointment of a Joint Committee

That this House do agree to concur in the appointment of a Joint Committee of both Houses of Parliament to examine and report on ..... and that Messrs. .... be members of such committee on the part of this House.

That a Message be sent to the Senate informing them of the above resolution.

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### No. 15

#### For the Appointment of a Special Committee

That a Special Committee consisting of Messrs. .... be appointed to consider (here describe matter to be considered) and all matters pertaining thereto, with power to call for persons, papers and records, to examine witnesses under oath and (if the members are to be more than 15) that S.O. 65 be suspended in relation thereto.

**No. 16****For an Instruction to a Committee**

“That it be an Instruction to the Standing Committee on (Banking and Commerce) that they have power to make provision in Bill No. .... for ..... (v.g. the repeal of the duty on promissory notes and bills of exchange.”)

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**No. 17****For the House to Resolve Itself into Committee to Consider Certain Resolutions**

That this House will, at its next sitting , resolve itself into a Committee to consider the proposed Resolution respecting .....

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**No. 18****For Concurrence in a Report from a Special Committee**

That this House doth concur in the Report of the Special Committee appointed to consider and report upon (the arrangements which should be made for the celebration of the Fiftieth Anniversary of the foundation of this Dominion) presented on the (31st day of May last,)”;

(or) “That the First (or second, or third, as the case may be) Report of the Committee etc., be concurred in.”

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**No. 19****For Concurrence in a Committee Report Recommending an Expenditure of Money or the Levying of an Impost**

That the Final Report of the Select Standing (or Special) Committee on ..... be now considered and that the recommendations contained therein be commended to the consideration of the Government.

## No. 20

**For Concurrence in a Report from a Special Committee to Whom a Bill was Referred. (When the Report is not the Bill Itself)**

That this House doth concur in the First (Second or Third) Report of the Special Committee to whom was referred Bill No. (13, intituled an Act to consolidate and amend the Railway Act);

(or) That the First (Second or Third as the case may be), Report of the Special Committee appointed to, etc., be concurred in.

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## No. 21

**For Concurrence in a Report from a Standing Committee**

That this House doth concur in the (Fourth) Report of the Standing Committee on Miscellaneous Private Bills; (or) That the (Fourth) Report of the Standing Committee on Miscellaneous Private Bills be concurred in.

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## No. 22

**For the Formation of the Committee of Supply**

That this House will, to-morrow, resolve itself into a Committee to consider of a Supply to be granted to His Majesty.

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## No. 23

**For the Formation of the Committee of Ways and Means**

That this House will, to-morrow, resolve itself into a Committee to consider the Ways and Means for raising the Supply to be granted to His Majesty.

**No. 24****For the House to Resolve Itself into the Committee of Supply**

(The Order of the Day being read for the House to resolve itself into the Committee of Supply, this motion is made, usually by the Finance Minister):

That Mr. Speaker do now leave the Chair.

---

**No. 25****For the House to Resolve Itself into the Committee of Ways and Means**

(The Order of the Day being read for the House to resolve itself into the Committee of Ways and Means, this motion is made, usually by the Finance Minister.);

That Mr. Speaker do now leave the Chair.

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**No. 26****For Referring the Estimates to the Committee of Supply**

(After the Governor-General's message transmitting the estimates has been read in the House, the Finance Minister makes this motion):

That His Excellency's Message and Estimates be referred to the Committee of Supply.

---

**No. 27****For Reporting Progress (in Committee of the Whole, or Supply, or Ways and Means)**

I move, Mr. Chairman, that you do now report progress.

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**No. 28****For the Chairman to Leave the Chair in Committee of the Whole, or Supply, or Ways and Means**

I move, Mr. Chairman, that you do now leave the Chair.

## No. 29

**For Reviving the Order for the Formation of the Committee of Supply, or Ways and Means**

(When the House has adopted an amendment to the motion "that Mr. Speaker do now leave the Chair", for the House to go into Committee of Supply, (or Ways and Means,) the following motion may be proposed so as to prevent the order for the formation of either of those Committees from lapsing):

That the House do on ..... next, (or "to-morrow", or "immediately") resolve itself into Committee of Supply (or Ways and Means.)

## No. 30

**For Voting Supplies in Committee**

That a sum not exceeding \$..... be granted to His Majesty for Customs (or any Department) as follows: Salaries, \$..... contingencies \$..... for the fiscal year ending 31st March, 192 .....

## No. 31

**For Making Good the Supply (Usually Called the Ways and Means Resolution)**

That towards making good the Supply granted to His Majesty for the expenses (or: on account of certain expenses) of the Public Service for the financial year ending 31st March ..... 19 ..... the sum of \$..... be granted out of the Consolidated Revenue Fund of Canada.

## No. 32

**For Referring the Auditor General's Report to the Public Accounts Committee**

That the Public Accounts and the Report of the Auditor General, for the fiscal year ending ..... be referred to the Standing Committee on Public Accounts.

**No. 33****For the Adjournment of the House over a Holiday**

That when this House adjourns on (Friday, the 29th day of June next) it stand adjourned until (Tuesday, the 3rd of July).

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**No. 34****For the House to Sit on Wednesday or Friday Evening**

That on Wednesday or Friday the ..... , and subsequent Wednesdays and Fridays to the end of the Session, the House shall meet at three o'clock, p.m., and that the sittings on such days shall in every respect be under the same rules as provided for other days.

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**No. 35****For the Government to Take Over Private Members' Days**

That on and after Monday the ..... , to the end of the session, Government Notices of Motions and Government Orders shall have precedence on Thursdays over all business except Questions by Members and Notices of Motions for the production of papers.

---

**No. 36****For the House to Sit on Saturday**

That on Saturday the ..... , and every Saturday thereafter until the end of the Session, the House shall meet at three o'clock in the afternoon and the order of business and procedure shall be the same as on Fridays.

---

**No. 37****For Holding Morning Sittings**

That on and after Tuesday the ..... until the end of the present session, the House shall meet at 11 o'clock in the morning of each sitting day and that in addition to the usual intermission at six o'clock p.m. there shall also be an intermission every day from one to three o'clock.

**No. 38****For the Adjournment of the House for the Purpose of Discussing a Matter of Urgent Public Importance under S.O. 26**

The member, from his place in the House, says: "Mr. Speaker, I ask leave to move the adjournment of the House, under Standing Order 26, for the purpose of discussing a definite matter of urgent public importance, namely (here describe the question to be debated). He then hands a written statement of the matter to be discussed to the Speaker who, having read it to the House, puts the question: "Has the honourable member leave to proceed?" (If leave is granted the member moves the following):

That the House do now adjourn.

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**No. 39****For the Suspension of a Sitting**

That the present sitting be now suspended till .....  
p.m. (or a.m., as the case may be), this day.

---

**No. 40****For the Adjournment of Debate**

That the Debate do now adjourn.  
(or) I move the adjournment of the debate.

---

**No. 41****For the Previous Question**

That the Question be now put.

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**No. 42****For Reading the Orders of the Day (S.O. 44)**

That the Orders of the Day be now read.  
(or) That the House do now proceed to the Orders of the Day.



---

No. 43**For Discharging an Order of the Day**

That Order of the Day No. .... (here describe the Order) which has just been read be discharged.

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## No. 44

**For Proceeding to Another Order (S.O. 44)**

That the House do now proceed to another Order, namely: (here describe the order either by giving the number or title thereof.)

---

## No. 45

**For Reverting to an Order of Business**

That the House do now revert to Routine Proceedings (or) to Government Orders (or) to Public Bills and Orders (or) to Private Bills (or) to Notices of Motions.

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## No. 46

**For Resuming a Suspended Order**

That the House do now proceed to etc. (as in Form No. 44.)

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## No. 47

**For Resuming Debate Adjourned, Under Routine Proceedings**

That the adjourned debate on the proposed motion of Mr. .... for the concurrence in the Final Report of the Special Committee on ..... be the First Order of the Day at the next sitting of the House.

---

## No. 48

**For Leave to Introduce a Bill**

I beg to move, seconded by ..... for leave to introduce a Bill intituled: An Act .....

**No. 49****For the Reading of Bills**

That Bill No. .... be now read a (first, second or third) time.

When this motion is negatived, it is competent for a member to move immediately: That the said Bill be read a first (second or third) time on ..... next.

---

**No. 50****Motion to Commit after Second Reading**

That Bill No. .... intituled An Act ..... (or, the said Bill) be referred to the Standing Committee on ..... (or to a Special Committee consisting of Messrs. ....) with power to report from time to time, (or) with power to send for persons, papers and records and to report from time to time.

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**No. 51****For Referring a Bill Back to a Committee (Generally)**

That the said Bill be referred back to the Standing Committee on ..... for further consideration.

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**No. 52****For Referring a Bill Back to a Committee (for particular reasons)**

(The Order of the Day being read for the House to resolve itself in Committee of the Whole on a Bill):

"That the House do not now resolve itself into Committee of the Whole on said Bill but that the said Bill be sent back to the Standing Committee on ..... (or the Special Committee, as the case may be) with instruction that they have power to make therein provision for ....."

**No. 53****For Considering Private Bills in Committee of the Whole**

That Mr. Speaker do now leave the Chair for the House to resolve itself into Committee of the Whole on Private Bills.

---

**No. 54****For Suspending Rule re Posting of Private Bills**

That in view of the late period of the Session, Private Bills sent by the Senate to this House for concurrence be read twice on the same day, and that Rule 105 relative to posting of such Bills be suspended for the remainder of the Session.

---

**No. 55****For Refunding Fees and Charges Paid on Certain Bills**

That, in accordance with the recommendation contained in the (Second) Report of the (Standing) Committee on (Miscellaneous Private Bills), the fee and charge on each of the following Bills be refunded less the cost of printing and translation, viz.: Bill No. ....

(or) That the additional charge paid on Bill No. .... intituled An Act ..... be refunded, in accordance with the Recommendation contained in the (Seventh) Report of the (Standing) Committee on (Banking and Commerce).

---

**No. 56****For the Passing of a Bill**

That Bill No. .... do now pass and that the title be as on the Order Paper.

(If the title is to be changed): That Bill No. .... do now pass and that the title be (here give the new title).

---

**No. 57****For Concurrence in Senate Amendments**

That the said amendments be now read a second time and concurred in.

## No. 58

**For Disagreeing to Amendments Made by the Senate to Bills  
Passed in the House of Commons**

That a Message be sent to the Senate to acquaint Their Honours that this House disagrees to their amendment to Bill No. (66, An Act to amend the Judges Act), for the following reasons:

Because the amendment is not relevant to the Bill which is only to provide the salaries for two additional judges, to restrict in certain cases the travelling expenses of judges, and to extend certain provisions of the Act now applying to County Court judges and to the Circuit Court of the District of Montreal;

Because, though it may be advisable to modify the pensions at present provided with respect to future appointments, it is not in the public interest that the remuneration or pensions of judges now on the Bench should be changed to their prejudice;

Because, the amendment forbids the judges to perform any duties outside their judicial duties, and that, while it may be an advantage to make more precise and definite the prohibitions at present existing, there are duties that everyone is bound to perform, that so wide a prohibition is impossible for the judges to observe, and that, in any case, it is not in the public interest to enforce so unlimited a restriction;

Because, there are in connection with said amendment questions of grave importance touching the independence of the judiciary, which call for the careful consideration of the House of Commons, consideration which cannot adequately be given at the present session, and because these questions can be more advantageously dealt with upon a Bill submitted for that purpose, and at a time when they can be deliberately considered.

---

No. 59**For Agreeing to Senate Amendments to Money Bills**

(The amendments having been concurred in):

That the Clerk do carry back the Bill to the Senate and acquaint Their Honours that this House hath agreed to their amendments, the Minister of Finance accepting the said amendments with a protest against the right of the Senate to make amendments to money bills.

## No. 60

**For a Conference with the Senate, When the Senate Insists on Its Amendments**

That a Message be sent to the Senate respectfully requesting a Free Conference with Their Honours to consider certain amendments made by the Senate to Bill No. .... An Act ..... to which amendments this House has not agreed and upon which the Senate insist, and any amendment which at such Conference it may be considered desirable to make to said Bill or amendments thereto.

---

## No. 61

**For a Conference with the Senate, When the House Insists on Its Amendments**

That a Message be sent to the Senate respectfully requesting a Free Conference with Their Honours to consider the reasons advanced by this House for insisting upon its amendments to Bill No. .... An Act ..... and any amendments which at such Conference it may be considered desirable to make to the said Bill or amendment thereto.

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## No. 62

**For Appointing the Managers of the Conference**

(Upon reception of Senate's Message acceding to the request for the Conference).

That Messrs. .... be appointed Managers on behalf of this House of the Free Conference with the Senate with respect to the amendments made to Bill No. .... intituled An Act ..... and that a Message be sent to the Senate to acquaint Their Honours therewith.

(This motion applies to cases provided in motions Nos. 60 and 61.)

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## No. 63

**For a Return**

That there be laid before this House a Return showing etc.

## No. 64

**For an Address to the Governor-General for the Production of Documents**

That an humble address be presented to His Excellency the Governor-General, praying His Excellency to cause to be laid before this House a copy of all documents, letters, messages, correspondence reports and Orders in Council respecting etc.; and that the said Address be presented to His Excellency by such members of this House as are of the King's Privy Council.

---

## No. 65

**For Copy of Correspondence**

That there be laid before this House a copy of all correspondence between any member of the Government and ..... referring to etc.

(or) That there be paid before this House a copy of all letters, papers and documents of any kind relative to etc.

(or) That there be laid before this House, a copy of all vouchers, correspondence, etc., in connection with etc.

(or) That there be laid before this House a copy of all correspondence, telegrams and documents of all kinds exchanged between any person or persons and the Department of ..... or any other Department of the Government relating to .....; and also, copies of all correspondence exchanged between the different Departments of the Government respecting the same question.

---

## No. 66

**For Printing a Document in Case of Urgency**

That ..... (describe the document) be printed forthwith, and that Standing Order 66 in relation thereto be suspended.

(This motion requires the unanimous consent of the House.)

## No. 67

## For Printing Documents in Both Languages

That 500 copies in the English language and 400 copies in the French language of the (here describe the document) laid on the table of the House this day (or on the ..... day of ..... ) be printed forthwith and that Standing Order 66 in relation thereto be suspended.

---

## No. 68

## For Correcting Entries in the Votes and Proceedings or Journal

That the Votes and Proceedings (or the Journal) of the sitting of ..... be corrected by striking out the words ..... in line ....., page ....., or by inserting the words ..... between the words ..... and ..... in line ....., to line ....., page ..... (or) by striking out the words ..... in line ....., page ..... and substituting therefore the words .....

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## No. 69

## For Cancelling Entries in the Votes and Proceedings or Journal

That the entries made in the Votes and Proceedings (or Journal) of the sitting of ..... in connection with ..... be expunged.

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## No. 70

## For Dividing a Complicated Question

That the question under debate be divided into two propositions, one of them to read as follows ....., and the other one, as follows .....

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## No. 71

## For Rescinding a Resolution of the House

That the resolution (or motion) adopted by this House on ..... and reading as follows ..... be rescinded.

## No. 72

## For Reading a Paper Laid Upon the Table

That the return (or report, or paper or petition as the case may be) which has just been laid upon the table be now read.

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## No. 73

## For Taking Down Unparliamentary Words

That the words ..... which have just been used by Mr. ...., member for ....., be taken down by the Clerk.

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## No. 74

## For Deciding Whether the Words Taken Down Have Been Used

That the House is of opinion that the words which have been taken down and read by the Clerk have been used by Mr. ...., member for .....

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## No. 75

## For Directing the Sergeant-at-Arms to Take a Member into Custody

That Mr. ...., member for ....., be taken into custody by the Sergeant-at-Arms.

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## No. 76

## For Directing a Member to Attend in his Place to Answer for His Conduct

That Mr. ...., member for ....., having refused to comply with an order given to him by the House on ..... do attend in his place to-morrow to answer for his conduct.



## No. 77

## For Directing the Speaker to Admonish or Reprimand

That Mr. .... be admonished (or reprimanded) by Mr. Speaker for (here describe the breach committed).

---

## No. 78

## For Censuring and Temporarily Suspending

That the House do censure Mr. ...., member for ...., and exclude him from the Chamber for fifteen days (or for the rest of the sitting, or any other period, as the case may be).

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## No. 79

## For Having an Admonition or Reprimand Entered in the Journal

That the admonition (or reprimand) delivered by Mr. Speaker against the ..... members for ..... be entered in the Journal.

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## No. 80

## For Relieving from Punishment

That Mr. ...., member for ....., be relieved from the suspension pronounced upon him.

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## No. 81

## For Discussing a Question of Which Notice Has Been Given

That, in the opinion of this House, it is expedient to amend the Act intituled An Act ..... so as to provide that

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(or) That, in the opinion of this House, it is essential for the future welfare of Canada that appropriate measures be taken by the Government to .....

(or) That, in the opinion of this House, it is advisable that the Government should as soon as possible bring forward a policy having for its object the .....

(or) That, in the opinion of this House, action should be taken by the Government at the earliest possible opportunity with a view to .....

(or) That, in the opinion of this House, the Government should introduce legislation at this session which will .....

(or) That, in the opinion of this House, it is desirable that the Government should fully realize that .....

### No. 82

#### For Rejecting the Vote of an Interested Member

That the vote of Mr. ...., member for .....  
in favour of (or against) the motion—"That ..... "  
be disallowed inasmuch as the said member has a direct pecuniary interest in the question, and that the Votes and Proceedings be carried accordingly.

### No. 83

#### For the Condemnation of an Unworthy Act on the Part of a Minister or an Officer of the Crown

That this House recommend to the Government the advisability of reducing the salary of Mr. ...., Minister of .....  
(or) Deputy Minister of ..... by  
\$.....

### No. 84

#### For Applying Closure

That the debate on the (second or third) reading of Bill No. ...., intituled An Act ....., (or) clause ( ..... of Resolution respecting ..... (or) on Resoution respecting ..... ) shall not be further adjourned.

### No. 85

#### For Concurrence in a Recommendation by the Speaker

That the recommendation of His Honour the Speaker laid upon the table of the House on the ..... respecting the appointment of Mr. .... as a clerk at a salary of

\$..... in the Committee Branch (or any other branch) of the House be concurred in.

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**No. 86**

**For Returning Evidence to the Senate**

That a Message be sent to the Senate to return to that House the evidence taken before the Standing (or Special) Committee of the Senate to whom it was referred.

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**No. 87**

**For Hearing the Evidence of a Senator before a Committee**

That a Message be sent to the Senate requesting Their Honours to give leave to Hon. Mr. ...., one of their members, to attend and give evidence before the Standing (or Special) Committee of this House on .....

(If the Committee has already been empowered to hear witnesses, no special report is required prior to this motion.)

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**No. 88**

**For Accepting a Gift Made to the House**

That this House do accept the Mace presented in 1916 by Colonel the Right Honourable Sir Charles Cheers Wakefield, then Lord Mayor of London, and by Sir George Alexander Touche, M.P., and Sir Samuel George Shead, then Sheriffs of London, and that the warm thanks of the House be conveyed by Mr. Speaker to the donors.

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**No. 89**

**For Amending the B.N.A. Act**

That an humble Address be presented to His Most Excellent Majesty the King, in the following words:

We, Your Majesty's most dutiful and loyal subjects, (the Senate and) Commons of Canada, in Parliament assembled,

humbly approach Your Majesty praying that you may graciously be pleased to give your consent to submit a measure to the Parliament of the United Kingdom to amend the British North America Act, 1867, in the manner following, (or to the following effect):

“An Act to amend the British North America Act, 1867.”

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords, Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows: .....

This Act may be cited as the British North America Act (year of its passing) or the British North America Act, 1867, to ....., etc.

All of which we humbly pray Your Majesty to take into your favourable and gracious consideration.

---

#### No. 90

#### For Approval of a Treaty

That it be resolved by the ..... House of Commons.

That it is expedient that the Houses of Parliament do approve the Treaty of Peace between the Allied and Associated Powers and Bulgaria signed at Neuilly-sur-Seine on the twenty-seventh day of November, one thousand nine hundred and nineteen, a copy of which has been laid before Parliament and which was signed on behalf of His Majesty, acting for Canada, by the Plenipotentiaries therein named and that this House do approve of the same.

(Immediately after the adoption of the above motion, the following is moved):

That a Message be sent to the Senate informing their Honours that this House has adopted a Resolution approving of the Treaty of Peace between the Allied and Associated Powers and Bulgaria signed at Neuilly-sur-Seine on the 27th day of November, 1919, and requesting that their Honours will unite with this House in the approval of the said Treaty by filling up the blanks therein with the words “Senate and.”

---

#### No. 91

#### On the Occasion of the Sovereign's Death

(The following motion was made in the House after Queen Victoria's death):

On motion of Sir Wilfrid Laurier, seconded by Mr. Borden (Halifax),

Resolved, That an humble Address be presented to His Majesty the King in the following words:—

To the King's Most Excellent Majesty:

Most Gracious Sovereign:—

We, Your Majesty's dutiful and loyal subjects, the .....  
..... Commons of Canada, in Parliament assembled, humbly beg leave to approach Your Majesty with the expression of our deep and heartfelt sorrow at the demise of our late Sovereign Lady, Queen Victoria.

In common with our fellow subjects in all parts of the Empire, we deplore the loss of a great ruler whose manifold and exalted virtues have for three generations commanded the respect and admiration of the world.

As representatives of the Canadian people, we mourn for the beloved Sovereign under whom our Dominion first rose into being, and to whose wise and beneficent sway are due in no small measure its growth and prosperity.

May we venture to add that above and beyond these sentiments which the sad occasion naturally calls forth, there has come to each one of us a sense of personal bereavement which, we say it with all possible respect and duty, makes Your Majesty's sorrow our own.

We pray that the God of consolation may comfort Your Majesty and the members of the Royal Family in their affliction.

It is with feeling not less deep and sincere than those to which we have just given utterance that we hail Your Majesty's accession to the Throne of your ancestors. We beg to assure Your Majesty of our devoted attachment to Your Majesty's person and Government, and to express our unclouded confidence that the glory and the greatness of the British Empire abroad, and the happiness and well being of Your Majesty's people at home, will suffer no diminution under Your Majesty's gracious rule.

On motion of Sir Wilfrid Laurier, seconded by Mr. Borden (Halifax),

Ordered, that the said Address be engrossed.

On motion of Sir Wilfrid Laurier, seconded by Mr. Borden (Halifax),

Resolved, That a Message be sent to the Senate informing their Honours, That this House hath passed an Address to His Most Excellent Majesty the King, expressing the deep and heartfelt sorrow of this House at the demise of our late Sovereign Lady, Queen Victoria, and requesting their Honours to unite with this House in the said Address.

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## AMENDMENTS

### No. 92

#### The Six Months "Hoist"

The question being proposed "That Bill No. ....  
intituled ..... be now read a second (or third) time;"  
Mr. .... moves in amendment, seconded by Mr.  
.....

"That the word 'now' be left out, and the words 'this day six months' added at the end of the question."

(This amendment may also be moved on the second reading of a resolution.)

---

### No. 93

#### On Second Reading

The question being proposed "That Bill No. ....  
intituled An Act ..... be now read a second time";

Mr. .... moves in amendment thereto, seconded  
by Mr. ...., that all the words after "That" in the  
said motion be struck out and the following substituted there-  
for:

"The further consideration of this Bill be deferred until the principle thereof has, by means of a Referendum, been submitted to and approved of by the electors of Canada."

(or) "The character and object of this Bill are such as to constitute it a measure of public policy which ought not to be dealt with by any private Bill."

(or) The question being proposed "that Bill No. 133, the War-Time Elections Act, be now read a second time."

Sir Wilfrid Laurier moved in amendment thereto, seconded by Mr. Pugsley: "That this Bill be not now read a second time but that it be resolved that the abridgement by this Parliament of the electoral franchise now enjoyed in any

Province of the Dominion by any class of His Majesty's subjects would be contrary to the peace, order and good government of Canada."

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### No. 94

#### On Third Reading of a Bill

The question being proposed "That Bill No. 133 intituled the War-Time Elections Act be now read a third time."

Mr. Neely moved in amendment thereto, seconded by Mr. Sinclair, "That the said Bill be not now read a Third Time but that it be referred back to the Committee of the Whole with instruction that they have power to amend it by eliminating from it all such provisions as tend to remove the franchise from any class of His Majesty's subjects who are now qualified electors, according to the laws of the province in which they reside."

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### No. 95

#### On Concurrence in a Committee Report

The question being proposed "That the Final Report of the Select Standing (or Special) Committee on ..... be now concurred in,"

Mr. .... moves in amendment thereto, seconded by Mr. ...., "That the said Report be not now concurred in but that it be recommitted to the Select Standing (or Special) Committee on ..... with instruction that they have power to amend the same so as to recommend that ....."

---

### No. 96

#### To Address in Reply to Speech from the Throne

The question being proposed "That the following Address be presented to His Excellency the Governor-General to offer the humble thanks of this House to His Excellency, etc.

Mr. .... moves in amendment thereto, seconded by Mr. ...., "That the following words be added to the said Address: 'We respectfully submit to Your Excellency that (set forth here the grievances upon which the opinion of the House is sought)'."

## No. 97

## On Going into Committee of Supply

The Order being read for the House to resolve itself again into Committee of Supply:

Sir Robert Borden moved "That Mr. Speaker do now leave the Chair."

Mr. Fielding moved in amendment thereto, seconded by Mr. King: "That all the words after the word 'that' to the end of the question be left out and the following words be inserted instead thereof: this House desires to record its opinion that before any arrangement respecting the permanent representation of Canada at Washington is consummated, the House should be fully informed concerning the negotiations between the Canadian, Imperial and United States Governments and all correspondence and Orders in Council on the subject should be submitted to the House."

---

## No. 98

## On Going into Committee of Ways and Means

The Order being read for the House to resolve itself into Committee of Ways and Means,

Sir Henry Drayton moved, seconded by Sir George E. Foster: "That Mr. Speaker do now leave the Chair."

Mr. Fielding moved in amendment, seconded by Mr. King: "That all the words after the word 'that' to the end of the question be omitted and the following substituted therefor: 'in view of the continued increase in the high cost of living, of the greatly increased burden of taxation, of the hardship which many people suffer from these causes and the unrest naturally arising therefrom; and in view of the desirability of adopting measures to increase production and effect such relief to consumers and producers as may be within the power of Parliament, the House is of opinion that, pending a wider revision of the tariff, substantial reductions of the burdens of Customs taxation should be made with a view to the accomplishing of two purposes of the highest importance: first, diminishing the very high cost of living which presses so severely on the masses of the people; second, reducing the cost of the instruments of production in the industries based on the natural resources of the Dominion, the vigorous development of which is essential to the progress and prosperity of our country.'"



## No. 99

## On Order for Committee of the Whole

The order being read, for the House to go into Committee of the whole on the Bill intituled An Act to establish a Supreme Court and a Court of Exchequer for the Dominion of Canada.

Mr. .... moves, seconded by Mr. ....

"That Mr. Speaker do now leave the Chair."

Mr. .... moves in amendment, seconded by Mr. ...., "That all the words after the word 'That' to the end of the question be left out and the following words substituted instead thereof: 'The Bill be referred to a Special (or Standing) Committee'."

## No. 100

## Consequential Amendment to Senate Amendment

The Order for consideration of the Amendment made by the Senate to the Bill No. 29, intituled An Act respecting Honey, is called and read. Said amendment is as follows: Page 1, line 26: add the following as section 4: "Every one who violates any provision of section two or section three of this Act is guilty of an offence and liable upon summary conviction to the penalties provided by section sixteen of the Food and Drugs Act, 1920."

The said amendment having been read a second time;

Mr. Tolmie moves, seconded by Mr. Ballantyne, that the said amendment be concurred in subject to the following consequential amendment: "That the said amendment be amended by striking out the words 'section two or' in the first line thereof and inserting in the first line, after the word 'who,' the following: 'is guilty of wilful adulteration of honey under section two or who.' That a Message be sent to the Senate to acquaint their Honours therewith."

## No. 101

## On Report of Resolution from Committee of the Whole

(When a motion for considering the reports stands on the Order Paper.)

The question being proposed for the second reading and concurrence in the Resolution:

Mr. ...., in amendment, seconded by Mr. ...., That all the words after "that" to the end of the question be left on and the following substituted therefor .....

(Any amendment may be made by the House at this stage, but if it entails a long debate the resolution had better be referred back.)

---

### No. 102

#### On Introduction of a Bill

The question being proposed that Mr. .... have leave to introduce Bill No. .... intituled An Act .....

Mr. .... moves in amendment, seconded by Mr. ...., that the following words be added at the end of the question .....

(An amendment to the title of the bill may be moved at this stage.)

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### AMENDMENTS TO AMENDMENTS

#### No. 103

The question being proposed "That Bill No. 75, intituled An Act respecting Military Service, be now read a second time."

Sir Wilfrid Laurier moves, seconded by Mr. Pugsley, in amendment thereto, "That all the words after the word 'That' in the said motion be struck out and the following substituted therefor: 'the further consideration of this Bill be referred until the principle thereof has, by means of a referendum, been submitted to and approved of by the electors of Canada.'"

The question being proposed on the amendment, Mr. Barrette moved, seconded by Mr. Achim, in amendment to the said amendment, "that all the words of the said amendment after the word 'therefor' be left out and replaced by the following: this Bill be not now read a second time but that it be read a second time this day six months."

And the question being put on the amendment to the amendment, it was negatived.

And the question being put on the amendment, it was negatived.

And the question being proposed on the main motion.

Mr. Copp moved, seconded by Mr. Chisholm, in amendment thereto, "That all the words of the question after the word 'That' be struck out and the following substituted therefor: 'the further consideration of this Bill be deferred until such adequate provision has been made for the dependants of soldiers enlisted for overseas service as will remove the necessity of raising money by public subscription for their support'."

And the question being put on the said amendment, it was negatived.

And the question being put on the main motion, it was resolved in the affirmative.

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### No. 104

#### Sub-Amendments Passed in the Affirmative

Mr. Lemieux moved, seconded by Mr. Marcil, "That in the opinion of this House, action should be taken by the Government at the earliest possible opportunity with a view to give effect to the recommendations of the Committee on Technical Education."

Mr. Blake moved, seconded by Mr. Currie, in amendment thereto, "That all the words after the word 'That' be struck out and the following substituted therefor: 'in the opinion of this House, the promotion of technical education and manual training is essential to the proper development of the resources of Canada and the extension of her internal and foreign commerce, and, that reasonable assistance should be given thereto at the earliest practical opportunity'."

Mr. Steele, seconded by Mr. Mackie, moved in amendment to the said amendment, that the words "reasonable assistance should be given" be struck out of the said amendment and the following submitted therefor: "the Government should consider the advisability of giving assistance."

And the question being put on the said amendment to the amendment, it was resolved in the affirmative.

And the question being put on the amended amendment, it was resolved in the affirmative.

And the question being put in the main motion so amended, Mr. Tolmie moved, seconded by Mr. Stewart, "That the following words be added at the end thereof: 'as soon as the financial condition of the country will permit'."

And the question on the amendment to the original question, so amended, being again proposed, it was resolved in the affirmative.

Then the main question as amended being put as follows:

"That, in the opinion of this House, the promotion of technical education and manual training is essential to the proper development of the resources of Canada and the extension of her internal and foreign commerce, and, that the Government should consider the advisability of giving assistance thereto at the earliest practicable opportunity as soon as the financial condition of the country will permit'."

It was resolved in the affirmative.

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## PETITIONS

### No. 105

#### To the Governor in Council

To His Excellency the Right Honourable .....  
Governor-General of Canada, in Council.

The Petition of the undersigned ..... of the  
..... of ..... humbly sheweth:

That (here state the object desired by the petitioner).

Wherefore your petitioner humbly prays that Your Excellency may be pleased to .....

And as in duty bound your petitioner will ever pray.

(Signature.) Seal in case of an existing Corporation. (Date.)

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### No. 106

#### (To Either House)

To the Honourable the Senate (or) House of Commons of  
Canada, in Petition assembled:

The Petition of the undersigned ..... of the  
..... of .....

That (here state the object desired by the petitioner).

Wherefore your petitioner humbly prays that Your Honourable House may be pleased to .....

And as in duty bound your petitioner will ever pray.

(Signature.) Seal in case of an existing Corporation. (Date.)

## NOTICES

## No. 107

## By Two Members to the Speaker in Case of a Vacancy

Dominion of Canada

The House of Commons.

To wit:

To the Honourable the Speaker of the House of Commons:

We, the undersigned, hereby give notice that a vacancy has occurred in the representation in the House of Commons, for the Electoral District of (here state Electoral District, cause of vacancy and name of member vacating seat).

Given under our Hands and Seals, at ....., this ..... day of .....

(Signature)

Member for the Electoral District of .....  
(Seal)

Member for the Electoral District of .....  
(Seal)

## No. 108

## By Two Members in Case of Absence of Speaker

Electoral District of .....

Dominion of Canada

House of Commons

To wit:

To Hon. J. A. Stewart, Esq., M.P. for Lanark  
and

Hon. Charles Marcil, M.P. for Bonaventure.

We, the undersigned, hereby give notice, in pursuance of Chapter 143 of the Revised Statutes of Canada, 1952, the Speaker being absent from Canada, that a vacancy hath occurred in the representation of the House of Commons for the Electoral District of ..... consequent upon the death of ..... the sitting member therefor.

Given under our hands and seal at Ottawa this .....  
day of ..... 1920.

.....  
Member for the Electoral District of .....

.....  
Member for the Electoral District of .....

**No. 109****Resignation of a Member**

Dominion of Canada

House of Commons

To wit:

To the Honourable the Speaker of the House of Commons:

I, ..... member of the House of Commons of Canada, for the Electoral District of ..... do hereby resign my seat in the said House of Commons, for the constituency aforesaid.

Given under my hand and seal of the ..... of  
..... this day of .....

(Signature)

(Seal)

Witness

Witness

(2 witnesses required)

**No. 110****Two Members' Warrant for New Writs of Election**

Electoral District of .....

Dominion of Canada

House of Commons

To wit:

To the Chief Electoral Officer for Canada:

We, the undersigned, hereby give notice, in pursuance of section 145 of chapter of the Revised Statutes of Canada, 1952, the Speaker being absent from Canada, that a vacancy hath occurred in the representation in the House of Commons for the Electoral District of ..... consequent upon the death (or resignation or appointment to a place of emolument) of the sitting Member therefor, and you are hereby authorized to issue a new Writ for the election of a Member to fill such vacancy.

Given under our hand and seal at ..... this  
..... day of ..... 19.....

Member for the Electoral District of .....

Member for the Electoral District of .....

## PROCLAMATION

No. 111

For Assembling Parliament for the Despatch of Business.

BYNG OF VIMY

(L.S.)

## CANADA

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, KING, Defender of the Faith, Emperor of India.

To Our Beloved and Faithful the SENATORS of the Dominion of Canada, and the MEMBERS said Dominion, and to each and every of you—

GREETINGS

## A PROCLAMATION

WHEREAS Our Parliament of Canada stands prorogued to the ..... day of the month of ..... 19....., at which time, at Our City of Ottawa, you were held and constrained to appear. Nevertheless, for certain causes and considerations, we do will, by and with the advice of our Privy Council of Canada, that you and each of you, be as to us in the matter entirely exonerated, commanding and by the tenor of these presents enjoining you, and each of you and all others in this behalf interested, that on ..... the ..... day of the month of ..... next, at our City of Ottawa aforesaid, personally you be and appear, for the despatch of business, to treat, do, act and conclude upon these things which in our said Parliament of Canada, by the Common Council of our said Dominion, may by the favour of God, be ordained.

In Testimony Whereof, We have caused these Our Letters to be made Patent, and the Great Seal of Canada to be hereunto fixed. WITNESS Our Right Trusty ..... etc., etc., .....

At Our Government House, in Our City of Ottawa, in Our said Dominion, this day of ..... in the year of Our Lord one thousand nine hundred and ....., and in the ..... year of Our Reign.

By Command,

Under-Secretary of State.

## FORMULAE USED BY MEMBERS

### No. 112

#### Notice of Closure

I beg to give notice that immediately before the Order of the Day is next called for resuming the debate on the motion for ..... I will move that the said debate shall not be further adjourned. (This notice can only be given by a Minister.)

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### No. 113

#### Report of Managers of Conference with the Senate.

Your Managers beg to report that they duly held the conference with the Managers appointed by the Senate with respect to the amendments made by the House of Commons to Bill A of the Senate, An Act to consolidate and amend the Railway Act, and that the Managers for the Senate have agreed to recommend that the Senate do agree to the amendment made by the House of Commons to Clause 325 of the said Bill with respect to the powers of the Railway Board with respect to tariff rates, but that the Senate Managers insist upon their refusal to agree to the amendments of the House of Commons to Clauses 374 and 376 of the said Bill, with respect to the powers granted to companies under special Act, and with respect to the connection of telephone lines with other systems, respectively.

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### No. 114

#### Introduction of Member

"Mr. Speaker, I have the honour to present to you ..... member for the Electoral District of ..... who has taken the oath and signed the roll and now claims the right to take his seat."

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### No. 115

#### Member's Oath

I, ....., do swear that I will be faithful and bear true allegiance to His Majesty King .....



## SPEAKERS' FORMULAE

## No. 116

## On Being Elected

The newly-elected Speaker may then make any remarks he thinks proper, but in doing so, he must also say: "I beg to return my humble acknowledgments to the House for the great honour you have been pleased to confer on me by (unanimously) choosing me to be your Speaker."

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## No. 117

## On Arriving in the Senate Chamber for the Speech from the Throne, after his Election.

May it please Your Excellency.—

The House of Commons have elected me as their Speaker, though I am but little able to fulfil the important duties thus assigned to me.

If in the performance of those duties, I should at any time fall into error, I pray that the fault may be imputed to me, and not to the Commons, whose servant I am,\* and who, through me, the better to enable them to discharge their duty to their King and Country, humbly claim all their undoubted rights and privileges, especially that they may have freedom of speech in their debates, access to Your Excellency's person at all seasonable times, and that their proceedings may receive from Your Excellency the most favourable construction.

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## No. 118

## On Returning from the Reading of the Speech from the Throne

I have the honour to inform the House that when the House did attend His Excellency, the Governor-General this day, His Excellency was pleased to make a speech to both Houses of Parliament, of which I have, to prevent mistakes, obtained a copy.

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\*If the speaker has been elected during the life of a Parliament, he stops here and does not deliver the remainder of this formulae.

## No. 119

## On Returning from the Senate after a Royal Assent

I have the honour to inform the House that when the House did attend His Excellency, the Governor-General this day, His Excellency was pleased to give, in His Majesty's name the Royal Assent to the following Bills:

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## No. 120

## After Prayers Before Calling the House to Order

"Let the doors be open."

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## No. 121

## On Introduction of a Bill

Mr. .... moves, seconded by ..... for leave to introduce a Bill intituled An Act .....

Is it the pleasure of the House that the Honourable Gentleman shall have leave to introduce said Bill?

Carried.

Moved by Mr. ...., seconded by Mr. .... that the said Bill be now read a first time. Is it the pleasure of the House to adopt the motion?

Carried.

*Clerk Assistant:* "First reading of this Bill."

When shall the said Bill be read a second time?

Next sitting of the House.

---

## No. 122

## On Second Reading of a Bill

Moved by Mr. ...., seconded by Mr. .... that Bill No. .... intituled An Act ..... be now read a second time. Is it the pleasure of the House to adopt the motion? Carried.

*Clerk Assistant:* "2nd Reading of this Bill."

Moved by Mr. .... seconded by .....

that I do now leave the Chair for the House to resolve itself in Committee of the Whole on said Bill. Is it the pleasure of the House to adopt the motion? Carried. Or (as the case requires) Moved by Mr. .... seconded by Mr. .... that the said Bill be referred to the Standing Committees on ..... (or to a Special Committee). Is it the pleasure of the House to adopt said motion? Carried.

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### No. 123

#### After Having Put a Motion or Amendment.

Is it the pleasure of the House that the said motion (or amendment) be adopted?

Carried.

(Or): I declare the motion or amendment lost, or carried (as the case may be).

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### No. 124

#### On Receiving a Report from the Chairman of the Committee of the Whole.

Mr. ...., of the Committee of the Whole reports that they have considered Bill No. .... intituled An Act ..... and directed him to report the same without amendment.

When shall the report be received? Now? Now.

When shall said Bill be read a Third time? Now? Now.

Moved by Mr. ...., seconded by Mr. .... that said Bill be now read a third time. Is it the pleasure of the House to adopt the motion?

Carried.

*Clerk Assistant:* Third Reading of this Bill.

Moved by Mr. ...., seconded by Mr. .... that said Bill do now pass and that the title be as on the Order Paper.

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### No. 125

#### On Receiving a Report from the Chairman of the Committee of the Whole

##### (b) Reporting a Bill with Amendments

Mr. ...., of the Committee of the Whole reports that they have considered Bill No. .... An Act

..... and directed him to report the same with amendments. When shall the report be received? Now? Now.

*Clerk Assistant:* "First Reading of the Amendments."

Moved by Mr. ...., seconded by Mr. .... that the said amendments be now read a second time and concurred in. Is it the pleasure of the House to adopt the motion? Carried.

*Clerk Assistant:* "Second Reading of the Amendments."

When shall the Bill be read a Third time?

Next sitting of the House.

### No. 126

#### On Receiving a Report from the Chairman of the Committee of the Whole

##### (c) Reporting Progress on a Bill

Mr. ...., of the Committee of the Whole reports that they have considered Bill No. .... An Act ..... and directed him to report progress on same and ask him to sit again. When shall the Committee have leave to sit again? Next sitting of the House.

### No. 127

#### On Receiving Report of Chairman of Committee of Supply (or Ways and Means)

Mr. ...., of the Committee of Supply reports that they have agreed to certain resolutions and directed him to report the same and ask leave to sit again.

When shall the report be received? Next sitting of the House.

When shall the Committee have leave to sit again? Next sitting of the House.

### No. 128

#### On a Division

Is the House ready for the question?

(If nobody rises, the Speaker first reads the motion or puts the question.)

Is it the pleasure of the House to adopt the motion? Those in favour of the motion please say "aye", those against the motion, please say "no".

In my opinion the "noes" (or) "ayes" have it.

(If five members at least rise), then:

Call in the members.

(When the members are in, the Speaker puts the question again), then:

Those in favour of the motion, please rise.

(After these have been recorded):

Those against the motion, please rise.

(After the Clerk has announced the result):

I declare the motion lost (or) carried.

### No. 129

#### On Adjournment the House

This House stands adjourned until to-morrow at three o'clock in the afternoon (or, if the House adjourns later than midnight): until three o'clock this afternoon.

### No. 130

#### On an Appeal from the Speaker's Decision

The Speaker having decided that ..... Mr. .... appeals from that decision. Is it the pleasure of the House that the Speaker's decision be *sustained*? Those in favour of the Speaker's decision being sustained, please say "aye"; those against, please say "no." In my opinion, the "ayes" (or) "noes" have it.

(If five members at least rise.)

Call in the members.

(Division then takes place.)

### No. 131

#### On an Appeal from Chairman of Committee's Ruling

(Same as precedent, except that Speaker says:

Is it the pleasure of the House that the Chairman's ruling be *confirmed*.)

## No. 132

**In the Senate, for Royal Assent to Supply Bill**

May it please Your Excellency: (or Your Honour).

The Commons of Canada have voted Supplies required to enable the Government to defray certain expenses of the Public Service.

In the name of the Commons, I present to Your Excellency the following Bill:

An Act for granting to His Majesty certain sums of money for the Public Service of the financial year ending 31st March, 19.....

To which Bill I humbly request Your Excellency's (or Your Honour's assent.

## DEPUTY SPEAKER'S FORMULAE

## No. 133

**Reporting a Bill Without Amendment from the Committee of the Whole**

Mr. Speaker, the Committee of the Whole have considered Bill No. ...., An Act to ..... and directed me to report the same without amendment.

## No. 134

**Reporting a Bill with Amendment**

Mr. Speaker, the Committee of the Whole have considered Bill No. ...., An Act to ....., and directed me to report the same with an amendment (or) with amendments.

## No. 135

**Reporting Progress on a Bill or Resolution**

Mr. Speaker, the Committee of the Whole have considered Bill No. ...., An Act to ....., and directed me to report progress on same and ask leave to sit again.

## No. 136

## Reporting Supply or Ways and Means Resolutions

The Committee of Supply (or Ways and Means) have adopted certain Resolutions and directed me to report the same and ask leave to sit again.

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## No. 137

## Reporting a Resolution

Mr. Speaker, the Committee of the Whole has adopted a certain Resolution respecting ..... and directed me to report the same.

(A Resolution is always reported without any mention of amendments that may have been made in Committee.)

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## APPENDIX

1. Official Secrets and Freedom of Speech.
2. The Senate and House of Commons Act.
3. The House of Commons Act.
4. The Members of Parliament Retiring Allowances Act.
5. The British North America Act, 1867-1952.
6. The Statute of Westminster.
7. The Financial Administration Act, 1951.



## OFFICIAL SECRETS AND FREEDOM OF SPEECH

Report of the Select Committee appointed by the United Kingdom House of Commons to enquire into the applicability of the Official Secrets Acts to Members of the House in the discharge of their parliamentary duties, having regard to the undoubted privileges of the House as confirmed in the Bill of Rights;—Have agreed to the following REPORT:—

### PROVISIONS OF THE OFFICIAL SECRETS ACTS

1. The main provisions of the Official Secrets Acts and their effect so far as they are relevant to the present inquiry may be summarised as follows:—

Section 1 of the Act of 1911, as amended by the Act of 1920, makes it a felony for any person to obtain or communicate secret documents or information for a purpose prejudicial to the safety or interests of the state, the documents or information being such as might be useful to an enemy.

Section 2 of the Act of 1911, as amended by the Act of 1920, makes it a misdemeanour

(i) for those holding or having held office under His Majesty or for Government contractors or their employees to communicate without authorization official documents or information in their possession;

(ii) for others to receive such information voluntarily if they have reason to believe it is being communicated to them in contravention of the Act;

(iii) for others having received information as in (i) above to communicate it without authorization to any person other than a person to whom it is their duty in the interest of the state to communicate it.

Under section 2(1) of the Act of 1911, as amended by the Act of 1920 a person who communicates information to a person other than a person to whom he is authorized to communicate it commits no offence provided the person to whom he does communicate it is one to whom it is in the interest of the state his duty to communicate it. Whether the person to whom the defendant communicated the information, though not a person to whom he was authorized to communicate it, was yet a person to whom it was in the interest of the state his duty to communicate it would be a question for the jury to determine. The executive would not have the final word on the question.

A measure of protection is thus afforded to any person who communicates information to a member of parliament. It would likewise be a good defence for a person charged with receiving information to show that he was a person to whom it was, in the interest of the state, the duty of the person who communicated such information to do so.

The communication without authorization or the reception of information, which does not relate to matters affecting the safety of the state and is not even of a confidential character, will constitute an offence under this section. In *Lewis v. Cattle* it was held that a person who is not in the service of the Crown may yet hold an office under His Majesty within the meaning of the Official Secrets Acts. The category of persons from whom it is an offence to receive information is not confined to persons of the classes specified in sub-section (1). It is an offence to receive the information from any person if the recipient has reasonable ground for believing that the disclosure was originally made in contravention of the Acts.

Section 7 of the Act of 1920 makes it an offence to solicit, incite or endeavour to persuade a person to commit an offence under the Act.

Section 6 of the Act of 1920 imposes a duty on every person to give on demand to a chief officer of police or other specified person any information in his power relating to an offence or suspected offence under the Acts. It provides for the attendance of persons on payment of their reasonable expenses.

The purport and effect of the Official Secrets Acts being what is set out above, Your Committee's duty is to consider their relation to parliamentary privilege.

#### THE PRIVILEGE OF FREEDOM OF SPEECH

2. The privilege to which Your Committee were directed by the order of reference to have due regard is that usually referred to as the privilege of freedom of speech. This privilege is declared by the Bill of Rights in the following terms:—"That the freedom of speech and debates or proceedings in parliament ought not to be impeached or questioned in any court or place out of parliament.

3. The article in the Bill of Rights is not necessarily an exhaustive definition of the cognate privileges. But even assuming that it is, the privilege is not confined to words spoken in debate or to spoken words, but extends to all proceedings in parliament. While the term "proceedings in parliament" has

never been construed by the courts, it covers both the asking of a question and the giving written notice of such question, and includes everything said or done by a member in the exercise of his functions as a member in a committee of either House, as well as everything said or done in either House in the transaction of parliamentary business.

4. The privilege of freedom of speech being confined to words spoken or things done in the course of parliamentary proceedings, words spoken or things done by a member beyond the walls of parliament will generally not be protected. Cases may, however, easily be imagined of communications between one member and another, or between a member and a minister, so closely related to some matter pending in, or expected to be brought before, the House, that though they do not take place in the chamber or a committee room they form part of the business of the House, as, for example, where a member sends to a minister the draft of a question he is thinking of putting down or shows it to another member with a view to obtaining advice as to the propriety of putting it down or as to the manner in which it should be framed. The Attorney-General said that, should such a case come before the courts, he could not but think that they would give a broad construction to the term "proceedings in parliament" having regard to the great fundamental purpose which the privilege of freedom of speech served, and that he could "see a possible construction of 'proceedings' which would extend to matters outside the precincts if they were related to what is to happen in the House."

5. There is authority for saying that an act not done in the immediate presence of the House may yet be held to be done constructively in parliament and therefore protected. Sir Robert Atkyns, sometime Lord Chief Baron of the Exchequer, in his Argument upon the Case of Sir William Williams, says that the Commons' "right and privilege so far extends, that not only what is done in the very House sitting the parliament, but whatever is done relating to them . . . during the parliament and sitting the parliament, is nowhere else to be punished but by themselves or a succeeding parliament, although done out of the House. . . . In a just sense, any offence committed by a member relating to the parliament, though done out of the House, is termed an offence in parliament."

6. Sir Gilbert Campion expressed the opinion that "the immunity of members from the criminal law in respect of acts done by them in the exercise of the functions of their office" could

"not be confined to acts done within the four walls of the House". This conclusion was, he considered, involved in Mr. Justice O'Connor's dictum in *R. v. Bunting* that a member of parliament "is privileged and protected by *lex et consuetudo parliamenti*" in respect of "anything he may say or do within the scope of his duties in the course of parliamentary business." He drew your Committee's attention to two American decisions, *Coffin v. Coffin* and *Kilbourn v. Thompson*, decided by the Supreme Court of Massachusetts and the Supreme Court of the United States, respectively, regarding the extent of the protection afforded to members of legislative bodies by constitutional provisions relating to freedom of debate in those bodies. These decisions, he considered, went a long way towards establishing the proposition that privilege extended to every act resulting from the nature of the office of a member and done in the execution of that office, whether done in the House or out of it; and although they were not binding on the courts here, he was of opinion that considerable weight must be attached to them because the terms of the constitutional provisions in question were similar to, though not so wide as, those of the article in the Bill of Rights. In view of the broad construction given by the American courts to provisions confined in terms to speeches and debates he thought it reasonable to suppose that, if the courts in this country were called upon to construe the wider words in the Bill of Rights, they would go at least as far.

7. Whatever may be said with regard to acts resulting from the nature of the office of a member and done in the execution of that office generally, Mr. Justice O'Connor's dictum must, Your Committee think, command general assent; and it would, in their view, be unreasonable to conclude that no act is within the scope of a member's duties in the course of parliamentary business unless it is done in the House or a committee thereof and while the House or committee is sitting.

#### THE COURTS AND PARLIAMENTARY PRIVILEGE

8. The House of Commons has long claimed, as stated in the resolutions of the House of the 30th of May, 1837, "that by the law and privilege of parliament, the House has the sole and exclusive jurisdiction to determine upon the existence and extent of its privileges", and "that for any court or tribunal to assume to decide upon matters of privilege inconsistent with the

determination of either House of Parliament thereon is contrary to the law of parliament, and is a breach and contempt of the privileges of parliament." The courts, however, claim the right, where privilege of parliament is pleaded by way of defence, to determine whether the alleged privilege exists and whether the case falls within it, and in determining these questions the judges would not regard as conclusive a resolution of the House declaring any particular matter to be within its privileges. There is, therefore, a possibility of the courts taking a different view from that taken by the House. It is true that the prosecution of a member, for an act which the House adjudged to be within his privileges as a member, would itself be a breach of privilege, and that all parties concerned in the prosecution would subject themselves to the penalties incurred by those guilty of a contempt of the House, but this would not solve the difficulty. Your Committee do not think that any conflict between the two jurisdictions is likely to arise in practice. The Attorney-General, as already stated, gave it as his opinion that, should such a case come before the courts, they would give a broad construction to the term "proceedings in parliament", having regard to the great fundamental purpose which the privilege of freedom of speech served. Lord Denman, in his classic judgment in *Stockdale v. Hansard*, said that "all the privileges that can be required for the energetic discharge" by the members of the House of their duties, must be "conceded without a murmur or a doubt"; and in the recent case of *R. v. Sir R. F. Graham-Campbell, ex parte Herbert*, the court recognised that the privileges of the House could not be confined to what took place within the debating chamber.

#### APPLICABILITY OF THE OFFICIAL SECRETS ACTS TO MEMBERS OF PARLIAMENT.

9. The arguments in support of the contention that privilege affords no protection to members of parliament against prosecution under the Official Secrets Acts, and the reasons which have led Your Committee to reject it can be summarized as follows:—

(a) It has been said that the privileges of parliament do not apply to criminal matters and that members of either House are subject to the course of criminal justice. This statement is correct as regards the privilege of freedom from arrest. It does not apply to the privilege of freedom of

speech or to the cognate privileges. The immunity secured to members by these privileges extends to criminal prosecutions as well as to civil actions as *Ex parte Wason* shows.

(b) Mr. Justice Stephen laid it down in *Bradlaugh v. Gossett* that an ordinary crime committed in the House of Commons would not be withdrawn from the ordinary course of criminal justice. Your Committee think that Mr. Justice Stephen's dictum was not a very happy attempt to draw a line which must be drawn, since the House admittedly has not a general criminal jurisdiction. The true test is whether the act for which it is sought to make the member liable criminally was done in his capacity as a member or not. Mr. Justice O'Connor's dictum in *R. v. Bunting* that a member of parliament is not amenable to the ordinary courts "for anything he may say or do within the scope of his duties in the course of parliamentary business for in such matters he is privileged and protected by *lex et consuetudo parliamenti*" stated the position accurately.

(c) A third argument has been that the privilege of freedom of speech cannot extend to new offences created by statute. This contention is based upon a misconception of the nature and scope of the privilege. It does not merely secure members from prosecution for words which, if spoken beyond the walls of parliament, would constitute an offence at common law. In Mr. Justice Stephen's phrase: "Nothing said in parliament by a member as such can be treated as an offence by the ordinary courts". This was decided in 1668 when the judgment in Sir John Eliot's Case was reversed by the Lords upon a writ of error and this decision was confirmed by the Bill of Rights. It is a question of jurisdiction and not merely of personal privilege. Words spoken in the House of Commons are cognizable by the House alone and exclusively.

Privileges enjoyed by either House of Parliament or by the members of either House in their capacity as members can be abrogated only by express words in a statute. Had it not been for the fact that some of the matters with which the Official Secrets Acts deal affect the public safety, your Committee are confident that nobody would have dreamed of contending that they did or could derogate from the privileges of the House. Supposing Parliament were to pass a law making some form of slander a criminal offence without inserting any proviso preserving the privilege of free-



dom of speech in Parliament, would it be contended that members would become criminally liable for any reflections upon individuals uttered by them in the course of debate which fell within the category specified in the statute?

#### DISCLOSURES IN THE COURSE OF PARLIAMENTARY PROCEEDINGS

10. Your Committee are of opinion that disclosures by members in the course of debate or proceedings in Parliament cannot be made the subject of proceedings under the Official Secrets Acts. They think that a disclosure made by a member to a minister or by one member to another directly relating to some act to be done or some proceeding in the House, even though it did not take place in the House, might be held to form part of the business of the House and consequently to be similarly protected. On the other hand, a casual conversation in the House cannot be said to be a proceeding in Parliament, and a member who discloses information in the course of such a conversation would not, in their view, be protected by privilege, though it might be a question whether the evidence necessary to secure his conviction could be given without the permission of the House.

11. Whether a member of Parliament who discloses information in the course of parliamentary proceedings would be protected by privilege from proceedings under section 6 of the Act of 1920 is a question of some difficulty. It might well be that the prosecution would be unable to show that he had information relevant to the investigation of an offence or suspected offence unless they could give evidence of his statement in Parliament. By the law of Parliament "no member is at liberty to give evidence elsewhere in relation to any debates or proceedings in Parliament, except by the leave of the House of which he is a member"; and no clerk or officer of the House or shorthand writer employed to take minutes of evidence before the House or any committee thereof may give evidence elsewhere in respect of any proceedings or examination had at the bar or before any committee of the House without the special leave of the House. The authorities seem to prove that without the permission of the House there would, to say the least, be difficulty in getting evidence of the member's statement in Parliament before the Court.

12. Apart from the difficulty of proving the offence, there is, however, a further point which is best explained in a passage in the Attorney-General's memorandum of evidence:

"Could it be said that such proceedings were precluded in principle by the privilege of freedom of speech? It might be said on the one hand that the prosecution was not 'impeaching' or 'questioning' anything done in Parliament. It was proceeding against the member for failing to fulfil out of Parliament the duty of giving the information which Parliament itself had directed should be given.

"It might be said on the other hand that the member found himself interrogated by the police and subsequently in the dock as a result, though an indirect result, of what he said in debate and that this was contrary to the principle of freedom of speech as formulated in the Bill of Rights and illustrated by the precedents.

"How the court or either House might decide this question should it ever arise, is a question on which owing to its difficulties I ought not to be dogmatic. If such a case should ever arise and the authorities felt that the member was not or might not be protected by privilege, I find it difficult to imagine the police being authorised to interrogate unless the very gravest issues were involved."

13. Sir Gilbert Campion pointed out that, by the law of Parliament, as declared in the Bill of Rights, not only may debates and proceedings in Parliament not be questioned elsewhere, but freedom of speech may not be "impeached" in any court or place out of parliament, and further was of opinion that when the Bill of Rights was passed "to impeach" still retained its original signification of impeding, preventing or hindering. He mentioned that in 1771 a select committee of which the leading lawyers in the Commons were members, in enumerating the several heads of breaches of privilege and contempts of the House, distinguished "accusations tending to call into question before courts of law under the false or pretended denomination of offences not entitled to the privilege of the House, words or actions spoken or done under the protection of the House" from "prosecutions before the courts for words or actions so spoken or done"; and he expressed the opinion that such a prosecution might be held to be an accusation tending to call in question before a court of justice words spoken under the protection of the House, and consequently to constitute a breach of privilege.

14. As the matter was treated as one of doubt by both witnesses, Your Committee do not think they can usefully offer any opinion to the House on it. Moreover, since they were appointed, the Official Secrets Bill [Lords] has been passed by the Lords and has been read the first time by this House. By this bill it is proposed to restrict the use of the power of interrogation to cases where there is reasonable ground for suspecting that an offence under section 1 of the Act of 1911 has been committed, or, in popular language, to cases of espionage. A member of parliament is not very likely to be guilty of this offence, and, if he were, the act charged could certainly not be said to fall within the scope of his duties in the course of parliamentary business. If, therefore this bill passes into law it should remove any possibility of the power of interrogation being used so as to hamper members of Parliament in the discharge of their parliamentary duties.

#### DISCLOSURES IN SPEECHES IN CONSTITUENCIES

15. A member who discloses information of the kind in question in a speech in his constituency or anywhere beyond the walls of parliament would clearly not be protected by parliamentary privilege from proceedings under the Acts.

#### SOLICITATION OF THE DISCLOSURE OR RECEPTION OF INFORMATION

16. Your Committee are of opinion that the soliciting or receipt of information is not a proceeding in parliament, and that neither the privilege of freedom of speech nor any of the cognate privileges would afford a defence to a member of parliament charged with soliciting, inciting or endeavouring to persuade a person holding office under the Crown to disclose information which such person was not authorised to disclose, or with receiving information knowing, or having reasonable grounds to believe, that the information was communicated to him in contravention of the Official Secrets Acts. It might well be that what the defendant had said in the House had caused the authorities to institute inquiries, but if the prosecution could prove its case without giving evidence of what he had said, the proceedings could not be regarded as a questioning of a debate or proceeding in parliament. If, however, it were necessary, in order to prove the fact charged, to produce evidence

of what the defendant had said in the House, it would be in the power of the House to protect him by withholding permission for the evidence to be given.

17. As regards the reception of information, some protection is afforded to members of parliament by the fact that under the Official Secrets Acts information may lawfully be communicated to an unauthorized person provided that it is the duty in the interest of the state of the person who communicates such information to do so. But it should be clearly realized that such a defence must be founded on the express words of the proviso to the Act and is not derived in any sense from privilege. In each individual case the burden of proof would lie upon the official and the member of parliament concerned to show that the circumstances of the disclosure were such as to give rise to the duty, and such circumstances could only be shown in exceptional cases. It would be highly dangerous to give any colour to the view that the mere fact of election to the House of Commons creates a general duty towards the person elected on the part of the depositaries of official secrets to disclose those secrets without authorization. And in the case of such matters as, for example, the proceedings of the Cabinet, the provisions of the forthcoming Budget, the disposition of the Fleet on mobilization, the formula of a new gas, or the specifications of a new submarine, the circumstances that would justify disclosure must be so exceptional as to be almost unthinkable.

18. Although the legal position with regard to the solicitation of the disclosure by, or the receipt of information from, a person holding office under the Crown is as stated in paragraphs 16 and 17, official information, as the debates of the House show, is frequently obtained by members of parliament from persons who are not authorized to disclose it. Members' sense of responsibility and discretion have, Your Committee believe, prevented them from making use of any information thus obtained in a manner detrimental to the interests or safety of the State. Indeed, the information, though technically confidential, often does not relate to matters affecting the safety of the State. But as the Official Secrets Acts do not distinguish between the solicitation or receipt of information the disclosure of which would be prejudicial to the interests or safety of the State and the solicitation or receipt of information the disclosure of which

is merely unauthorized, the Acts, if strictly enforced, would make it difficult for members to obtain the information without which they cannot effectively discharge their duty. Any action which, without actually infringing any privilege enjoyed by members of the House in their capacity as members, yet obstructs or impedes them in the discharge of their duties, or tends to produce such results, even though the act be lawful, may be held to be a contempt of the House.

#### SAFEGUARDS AGAINST ABUSE OF THE OFFICIAL SECRETS ACTS

19. Apart from the protection afforded by privilege there are three safeguards against the possibility of the Official Secrets Acts being used in such a way as to obstruct members in the performance of their parliamentary functions. In the first place the initiation of the consideration of proceedings would almost invariably rest with the department whose secret had been disclosed, and though the head of the department need not necessarily be a member of the House of Commons, the department would be represented in the House. Secondly, no prosecution can be instituted without the consent of the Attorney-General in England or the Lord Advocate in Scotland. As the Attorney-General observed: "Where parliament provides that the fiat of the Attorney-General or the Lord Advocate is a condition precedent to a prosecution taking place . . . it is their business to exercise their discretion to the best of their ability, it being clear from the fact of their consent being necessary that this is a case where parliament thinks it particularly important that a discretion should be exercised and that prosecutions should not automatically go forward merely because the evidence appears to afford technical proof of an offence."

20. It is true that the Attorney-General's discretion must be exercised judicially. This, however, means no more than that his decision must be arrived at upon principle and not on grounds of expediency, and while the Attorney-General told Your Committee that it would be impossible to formulate in precise form all the circumstances which would fall to be considered should such an issue be placed before the Attorney-General, it would he said, "clearly be proper and inevitable for him to have due regard to the special position and duties of a member of parliament." Thus he went on to point out, "you get at both ends of the scale, in the question of Official Secrets prosecution, in the initiation and final consent, someone who is responsible to this House, and not only responsible to this

House, but who is in touch, of course, with its traditions and its privileges."

21. A third safeguard is the right of a member who finds himself threatened with a prosecution under the Official Secrets Acts to bring the matter before the House as a question of privilege. Unless, therefore, the incident occurs during a recess the matter can be discussed and considered by the House before any irrevocable step is taken.

22. *Your Committee think it would be inadvisable to attempt* by legislation or otherwise to define with precision the extent of the immunity from prosecution under the Official Secrets Acts to which members of parliament are or ought to be entitled. It would be extremely difficult, if not impossible, to draw a line between acts which are or ought to be permissible and acts which are or ought to be criminal. The privileges of parliament, like many other institutions of the British constitution, are indefinite in their nature and stated in general and sometimes vague terms. The *elasticity thus* secured has made it possible to apply existing privileges in new circumstances from time to time. *Any attempt to translate them into precise rules* must deprive them of the very quality which renders them adaptable to new and varying conditions, and new or unusual combinations of circumstances, and indeed, might have the effect of restricting rather than safeguarding members' privileges, since it would imply that, save in the circumstances specified, a member could be prosecuted without any infringement of the privileges of the House. "The dignity and independence of the two Houses," says Sir William Blackstone with great force, "are in great measure preserved by keeping their privileges indefinite. If all the privileges of parliament were set down and ascertained, and no privilege to be allowed but what was so defined and determined, it were easy for the executive power to devise some new case, not within the line of privilege, and under pretence thereof to harass any refractory member and violate the freedom of parliament."

23. Your Committee would emphasize a point mentioned in the Report which they made to the House in the last session of parliament, namely, that the privilege of freedom of speech enjoyed by members of parliament is in truth the privilege of their constituents. It is secured to members not for their personal benefit, but to enable them to discharge the functions of

their office without fear of prosecutions civil or criminal. The Commons in their famous protestation of 1621 declared the privileges of parliament to be the birthright and inheritance of *the subject*. There are, no doubt, dangers even in the limited immunity from prosecution under the Official Secrets Acts secured to members by parliamentary privilege. But they are dangers which must be run if members are to continue to exercise their traditional right and duty of criticising the executive. "Parliaments without parliamentary liberties," said Pym, "are but a fair and plausible way into bondage," and it remains as true to-day as it was in 1610 that "freedom of debate being once foreclosed, the essence of the liberty of parliament is withal dissolved".

24. The House of Commons has disciplinary powers over its members, and a member who abuses his privilege of speech may be punished, not merely by suspension from the service of the House, but by imprisonment or expulsion from the House, or both. Expulsion at least cannot be considered a light penalty. It is not so much on penal sanctions, however, that Your Committee would desire to rely for the prevention of abuses of parliamentary privilege prejudicial to the safety of the realm, as on the good sense of members themselves, who are as much concerned as ministers to prevent such abuses. Their inquiry has, they think, been useful in two respects at least. It has brought home to members the need for discretion on their part in framing questions or seeking information regarding matters which affect the safety of the realm, and has impressed upon ministers of the Crown that the powers conferred upon the executive by the Official Secrets Acts must not be used in such a way as to impede members in discharging their parliamentary duties.

25. Finally Your Committee would suggest that if the conclusions they have reached regarding the matters referred to their consideration commend themselves to the House, the House should, for the removal of doubts, come to a resolution expressing their agreement with those conclusions. A resolution of the House declaratory of the privilege of parliament, though not binding on the courts, would doubtless be treated by them with respect.

5th April, 1939.

## THE SENATE AND THE HOUSE OF COMMONS.

### SHORT TITLE

**1.** This Act may be cited as the *Senate and House of Commons Act*. R.S., c. 147, s. 1.

### DEMISE OF THE CROWN

**2.** No parliament of Canada shall determine or be dissolved by the demise of the Crown, but such parliament shall continue, and may meet, convene and sit, proceed and act, notwithstanding the demise of the Crown, in the same manner as if such demise had not happened. R.S., c. 147, s. 2.

**3.** Nothing in section 2 shall alter or abridge the power of the Crown, to prorogue or dissolve the Parliament of Canada. R.S., c. 147, s. 3.

### PRIVILEGES AND IMMUNITIES OF MEMBERS AND OFFICERS

**4.** The Senate and the House of Commons respectively, and the members thereof respectively, shall hold, enjoy and exercise,

(a) such and the like privileges, immunities and powers as, at the time of the passing of the *British North America Act 1867*, were held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom, and by the members thereof, so far as the same are consistent with and not repugnant to the said Act; and

(b) such privileges, immunities and powers as are from time to time defined by Act of the Parliament of Canada, not exceeding those at the time of the passing of such Act held, enjoyed and exercised by the Commons House of Parliament of the United Kingdom and by the members thereof respectively. R.S., c. 147, s. 4.

**5.** Such privileges, immunities and powers are part of the general and public law of Canada, and it is not necessary to plead the same, but the same shall, in all courts in Canada, and by and before all judges, be taken notice of judicially. R.S., c. 147, s. 5.

**6.** Upon any inquiry touching the privileges, immunities and powers of the Senate and of the Senate and of the House of Commons or of any member thereof respectively, any copy of



the journals of the Senate or House of Commons, printed or purported to be printed by the order of the Senate or House of Commons, shall be admitted as evidence of such journals by all courts, justices and others, without any proof being given that such copies were so printed. R.S., c. 147, s. 6.

#### REPORT AND PROCEEDINGS

**7.** (1) Any person who is a defendant in any civil or criminal proceedings commenced and prosecuted in any manner for or on account of or in respect of the publication of any report, paper, votes or proceedings, by such person or by his servant, by or under the authority of the Senate or House of Commons, may bring before the court in which such proceedings are so commenced and prosecuted, or before any judge of the same, first giving twenty-four hours' notice of his intention so to do to the prosecutor or plaintiff in such proceedings, or to his attorney or solicitor, a certificate under the hand of the Speaker or Clerk of the Senate or House of Commons, as the case may be, stating that the report, paper, votes or proceedings, as the case may be, in respect whereof such civil or criminal proceedings have been commenced and prosecuted, was or were published by such person or by his servant, by order or under the authority of the Senate or House of Commons, as the case may be, together with an affidavit verifying such certificate.

(2) Such court or judge shall thereupon immediately stay such civil or criminal proceedings, and the same and every writ or process issued therein shall be and shall be deemed and taken to be finally put an end to, determined and superseded by virtue of this Act. R.S., c. 147, s. 7.

**8.** (1) Where any civil or criminal proceedings are commenced or prosecuted for or on account or in respect of the publication of any copy of such report, paper, votes or proceedings, the defendant, at any stage of the proceedings, may lay before the court or judge, such report, paper, votes or proceedings, and such copy with an affidavit verifying such report, paper, votes or proceedings, and the correctness of such copy.

(2) The court or judge shall thereupon immediately stay such civil or criminal proceedings, and the same and every writ or process issued therein, shall be and shall be deemed to be finally put an end to, determined and superseded by virtue of this Act. R.S., c. 147, s. 8.

**9.** In any civil or criminal proceedings commenced or prosecuted for printing any extract from or abstract of any such report, paper, votes or proceedings, such report, paper, votes or proceedings may be given in evidence, and it may be shown that such extract and abstract was published *bona fide* and without malice, and, if such is the opinion of the jury, a verdict of not guilty shall be entered for the defendant. R.S., c. 147, s. 9.

#### INDEPENDENCE OF PARLIAMENT

##### *Members of the House of Commons*

**10.** Except as hereinafter specially provided,

- (a) no person accepting or holding any office, commission or employment, permanent or temporary, in the service of the Government of Canada, at the nomination of the Crown or at the nomination of any of the officers of the Government of Canada, to which any salary, fee, wages, allowance, emolument, or profit of any kind is attached; and
- (b) no sheriff, registrar of deeds, clerk of the peace, or county crown attorney in any of the provinces of Canada,

is eligible as a member of the House of Commons, or shall sit or vote therein. R.S., c. 147, s. 10.

**11.** Nothing in section 10 renders ineligible any person holding any office, commission or employment, permanent or temporary, in the service of the Government of Canada, at the nomination of the Crown, or at the nomination of any of the officers of the Government of Canada, as a member of the House of Commons, or disqualifies him from sitting or voting therein, if, by his commission or other instrument of appointment, it is declared or provided that he shall hold such office, commission or employment without any salary, fees, wages, allowances, emolument or other profit of any kind, attached thereto. R.S., c. 147, s. 11.

**12.** Nothing renders ineligible, as aforesaid, any person serving in the naval, army or air forces of Canada, or in any other of the naval, army or air forces of the Crown, while such forces are on active service in consequence of any war, and receiving salary, pay or allowance as a member of such forces while on such active service. 1940-41, c. 26, s. 1.

**13.** Notwithstanding anything in this Act, a member of the House of Commons shall not vacate his seat by reason only of his acceptance of an office of profit under the Crown, if that office is an office the holder of which is capable of being elected to, or sitting or voting in, the House of Commons. 1931, c. 52, s. 1.

**14.** Nothing in this Act renders ineligible, as aforesaid, any person, member of the Queen's Privy Council, holding the recognized position of First Minister, President of the Queen's Privy Council for Canada, Minister of Finance, Minister of Justice, Minister of National Defence, Secretary of State of Canada, Minister of Transport, Minister of Public Works, Postmaster General, Minister of Agriculture, Minister of National Revenue, Minister of Fisheries, Minister of Trade and Commerce, Minister of Labour, Secretary of State for External Affairs, Minister of National Health and Welfare, Minister of Veterans Affairs, Minister of Resources and Development, Minister of Mines and Technical Surveys, Minister of Citizenship and Immigration, Minister of Defence Production or Solicitor General, or any office that is hereafter created, to be held by a member of the Queen's Privy Council for Canada and entitling him to be a Minister of the Crown, or disqualifies any such person to sit or vote in the House of Commons, if he is elected while he holds such office, or is a member of the House of Commons at the date of his nomination by the Crown for such office, and is not otherwise disqualified. 1931, c. 52, s. 1.

**15.** No person, directly or indirectly, alone or with any other, by himself or by the interposition of any trustee or third party, holding or enjoying, undertaking or executing any contract or agreement, expressed or implied, with or for the Government of Canada on behalf of the Crown, or with or for any of the officers of the Government of Canada, for which any public money of Canada is to be paid, is eligible as a member of the House of Commons, or shall sit or vote in the said House. R.S., c. 147, s. 15.

**16.** If any member of the House of Commons accepts any office or commission, or is concerned or interested in any contract, agreement, service or work which, by this Act, renders a person incapable of being elected to, or of sitting or voting in the House of Commons, or knowingly sells any goods, wares or merchandise to, or performs any service for the Government of Canada, or for any of the officers of the Government of

Canada, for which any public money of Canada is paid or to be paid, whether such contract, agreement or sale is expressed or implied, and whether the transaction is single or continuous, the seat of such member shall thereby be vacated, and his election shall thenceforth be null and void. R.S., c. 147, s. 16.

**17.** (1) If any person disqualified or by this Act declared incapable of being elected to, or of sitting or voting in the House of Commons, or if any person duly elected, who has become disqualified to continue to be a member or to sit or vote, under section 16, nevertheless sits or votes, or continues to sit or vote therein, he shall thereby forfeit the sum of two hundred dollars for each and every day on which he so sits or votes.

(2) Such sum shall be recoverable from him by any person who sues for the same in any court of competent civil jurisdiction in Canada. R.S., c. 147, s. 17.

**18.** Sections 15, 16 and 17 extend to any transaction or act begun and concluded during a recess of Parliament. R.S., c. 147, s. 18.

**19.** (1) In every contract, agreement or commission to be made, entered into or accepted by any person with the Government of Canada, or any of the departments or officers of the Government of Canada, there shall be inserted an express condition, that no member of the House of Commons shall be admitted to any share or part of such contract, agreement or commission, or to any benefit to arise therefrom.

(2) In case any person, who has entered into or accepted, or who shall enter into or accept any such contract, agreement or commission, admits any member or members of the House of Commons, to any part or share thereof, or to receive any benefit thereby, every such person shall, for every such offence, forfeit and pay the sum of two thousand dollars, recoverable with costs in any court of competent jurisdiction by any person who sues for the same. R.S., c. 147, s. 19.

**20.** This Act does not extend to disqualify any person as a member of the House of Commons by reason of his being

- (a) a shareholder in any incorporated company having a contract or agreement with the Government of Canada, except any company that undertakes a contract for the building of any public work;
- (b) a person on whom the completion of any contract or agreement, expressed or implied, develops by descent

- or limitation, or by marriage, or as devisee, legatee, executor or administrator, until twelve months have elapsed after the same has so devolved on him;
- (c) a contractor for the loan of money or of securities for the payment of money to the Government of Canada under the authority of Parliament, after public competition, or respecting the purchase or payment of the public stock or debentures of Canada, on terms common to all persons;
  - (d) an officer of the militia, or militiaman, not receiving any salary or emolument out of the public money of Canada, except his daily pay when called out for drill or active service, or annual or other allowances of any kind prescribed by the *National Defence Act*, or fixed or prescribed by the Governor in Council under the provisions of the *National Defence Act*, or sums paid for enrolment, and any pay or remuneration allowed him for the care of arms or for drill instruction; or
  - (e) in the naval, army or air forces of Canada or in any other of the naval, army or air forces of the Crown while such forces are on active service in consequence of any war, and receiving salary, pay or allowances as a member of such forces while on such active service.
- R.S., c. 147, s. 20.

#### *Members of the Senate*

**21.** (1) No person, who is a member of the Senate, shall directly or indirectly, knowingly and wilfully be a party to or be concerned in any contract under which the public money of Canada is to be paid.

(2) If any person, who is a member of the Senate, knowingly and wilfully becomes a party to or concerned in any such contract, he shall forfeit the sum of two hundred dollars for each and every day during which he continues to be such party or so concerned.

(3) Such sum may be recovered from him by any person who sues for the same, in any court of competent jurisdiction in Canada.

(4) This section does not render any senator liable for such penalties, by reason of his being a shareholder in any incorporated company, having a contract or agreement with the Government of Canada, except any company that undertakes a contract for the building of any public work.

(5) This section does not render any senator liable for such penalties by reason of his being, or having been, a contractor for the loan of money or of securities for the payment of money to the Government of Canada under the authority of Parliament, after public competition, or by reason of his being, or having been, a contractor respecting the purchase or payment of the public stock or debentures of Canada, on terms common to all persons. R.S., c. 147, s. 21; 1932-33, c. 48, s. 1.

*Members of the Senate and of the House of Commons*

**22.** (1) No member of the Senate or of the House of Commons shall receive or agree to receive any compensation, directly or indirectly, for services rendered, or to be rendered, to any person, either by himself or another, in relation to any bill, proceeding, contract, claim, controversy, charge, accusation, arrest or other matter before the Senate or the House of Commons, or before a committee of either House, or in order to influence or to attempt to influence any member of either House.

(2) Every member of the Senate offending against this section is liable to a fine of not less than one thousand dollars and not more than four thousand dollars; and every member of the House of Commons offending against this section is liable to a fine of not less than five hundred dollars and not more than two thousand dollars, and shall for five years after conviction of such offence, be disqualified from being a member of the House of Commons, and from holding any office in the public service of Canada.

(3) Any person who gives, offers, or promises to any such member any compensation for such services as aforesaid, rendered or to be rendered, is guilty of an indictable offence, and liable to one year's imprisonment and to a fine of not less dollars. R.S., c. 147, s. 22.

LIMITATION OF ACTIONS

**23.** No person is liable to any forfeiture or penalty imposed by this Act, unless proceedings are taken for the recovery thereof within twelve months after such forfeiture or penalty has been incurred. R.S., c. 147, s. 23.

## EXAMINATION OF WITNESSES

**24.** The Senate or the House of Commons may administer an oath to any witness examined at the bar of the Senate or of the said House. R.S., c. 147, s. 24.

**25.** The Senate or the House of Commons may at any time order witnesses to be examined on oath before any committee. R.S., c. 147, s. 25.

**26.** Any committee of the Senate or of the House of Commons may administer an oath to any witness examined before such committee. R.S., c. 147, s. 26.

**27.** Where any witness to be examined under this Act conscientiously objects to take an oath, he may make his solemn affirmation and declaration. R.S., c. 147, s. 27.

**28.** Any solemn affirmation and declaration so made is of the same force and effect, and entails the same consequences, as an oath taken in the usual form. R.S., c. 147, s. 28.

**29.** Every such oath or affirmation shall be in the Forms A and B respectively in the Schedule. R.S., c. 147, s. 29.

**30.** Any person examined as aforesaid who wilfully gives false evidence is liable to the penalties of perjury. R.S., c. 147, s. 30.

**31.** Any oath or affirmation under this Act may be administered by

- (a) the Speaker of the Senate or of the House of Commons;
- (b) the chairman of any committee of the Senate or House of Commons; or
- (c) such person or persons as may from time to time be appointed for that purpose, either by the Speaker of the Senate or by the Speaker of the House of Commons, or by any standing or other order of the Senate or House of Commons respectively. R.S., c. 147, s. 31.

**32.** The following salaries shall be payable, respectively:

- (a) to the Speaker of the Senate, the sum of nine thousand dollars per annum;
- (b) to the Speaker of the House of Commons, the sum of nine thousand dollars per annum; and
- (c) to the Deputy Speaker of the House of Commons, the sum of six thousand dollars per annum. R.S., c. 147, s. 32; 1954.

## INDEMNITY

**33.** (1) For the sessions of each Parliament there shall be paid to every member of the Senate and House of Commons a sessional allowance at the rate of eight thousand dollars per annum.

(2) For the purposes of this section, a person shall be deemed to have become a member of the Senate on the day he is summoned to the Senate and a person shall be deemed to have become a Member of the House of Commons on the day last fixed for the election of a member to the House of Commons for the electoral district represented by him. 1954.

**34.** For the purposes of the allowances payable under section 33 and section 44, a person who, immediately before a dissolution of the House of Commons, was a member thereof shall be deemed to continue to be a member of the House of Commons until the date of the next following general election. 1954.

**35.** The sessional allowances payable under section 33 shall be paid in monthly instalments on the last day of each month.

(2) This section shall be deemed to have come into force on the 12th day of November, 1953, but there shall be deducted from the amounts payable to a member of the Senate or the House of Commons under section 33 of the *Senate and House of Commons Act*, as amended by this Act, any sessional allowance paid under the *Senate and House of Commons Act* to such member subsequent to the 12th day of November, 1953, and prior to the day on which this Act was assented to. 1954.

**36.** (1) A deduction at the rate of forty dollars per day shall be made from such sessional allowance for every day beyond twenty-one on which the member does not attend a sitting of the House of which he is a member, if the House sits on such day; but in the case of a member elected or appointed after the commencement of a session, no day of a session previous to such election or appointment shall be reckoned as one of such twenty-one days. 1954.

**37.** In the calculation of any deduction from any member's sessional allowance on account of absence, days which were spent by such member on duty with his corps in a regularly organized militia camp or in travelling between Ottawa and such camp shall not be computed. R.S., c. 147, s. 37.



**38.** In the calculation of any deduction from any member's sessional allowance on account of absence, days which were spent by such member in the naval, army or air forces of Canada or in any other of the naval, army or air forces of the Crown while such forces are on active service in consequence of any war, shall not be computed. R.S., c. 147, s. 38.

**39.** The Senate or the House of Commons may respectively make regulations, from time to time, by rule or by order, rendering more stringent upon its own members the provisions of this Act that relate to attendance of members or to deductions to be made from the sessional allowance. R.S., c. 147, s. 41.

**40.** To the member occupying the recognized position of Leader of the Opposition in the House of Commons, there shall be paid in addition to his sessional allowance an annual allowance of fifteen thousand dollars. R.S., c. 147, s. 42.

**41.** To the member of the Senate occupying the recognized position of Leader of the Government in the Senate there shall be payable in addition to his sessional allowance an annual allowance of ten thousand dollars, and to the member of the Senate occupying the recognized position of Leader of the Opposition in the Senate there shall be paid in addition to his sessional allowance an annual allowance of six thousand dollars; but if the Leader of the Government is in receipt of a salary under the *Salaries Act*, the annual allowance aforesaid shall not be paid. 1947, c. 73, s. 1.

**42.** (1) For each session of Parliament, there shall also be allowed to each member of the Senate and of the House of Commons his actual moving or transportation expenses, and reasonable living expenses while on the journey between his place of residence and Ottawa, going and coming, once each way.

(2) No such allowance shall be made for travelling outside of Canada, except from one point in Canada, to another by any direct route.

(3) Any member residing at a greater distance than four hundred miles from Ottawa may commute such allowance for travelling and living expenses, receiving in lieu thereof an allowance of fifteen dollars per day for each day necessarily occupied in the journey between his place of residence and Ottawa, going

and coming, once each way, the day of departure and the day of arrival being counted each as a full day.

(4) In addition to the expenses provided for in subsection (1), each member of the Senate and House of Commons shall be paid an allowance for expenses incidental to the discharge of his duties as a member, at the rate of two thousand dollars per annum for the period during which he is a member; this allowance shall be paid at the end of each calendar year and shall be subject to a deduction equal to one half of the deductions, if any, from the member's sessional allowances in respect of non-attendance at sittings of the House of which he is a member during such year; in the case of Ministers of the Crown, of the Leader of the Opposition in the House of Commons, and of members of the Senate, the amount of such allowance paid shall be deemed to be taxable income. R.S., c. 147, s. 43; 1945, c. 29, s. 1.

**43.** (1) For each session of Parliament, at the end of each month and at the end of the session, each member shall furnish the Clerk of the House of which he is a member with a statement, signed by him, of the number of day's attendance during the month or session, as the case may be, for which he is entitled to the said allowance, and, in case days are included on which the member has failed to attend by reason of illness, setting forth that fact and that his absence was due to such illness and was unavoidable.

(2) Every member applying for an allowance for travelling and living expenses shall furnish the Clerk of the House of which he is a member with a statement, signed by him, of his actual moving or transportation expenses, and of his living expenses, as provided for in section 44, and, if the member has elected to commute such allowance under section 44, a statement of the time necessarily occupied in his journeys to and from Ottawa, as provided by that section.

(3) Upon the said statements being certified by the Clerk, or the Assistant Clerk, and sworn to by the member before the accountant or assistant accountant of the House or any person authorized to take affidavits, the Clerk of the Senate or the accountant of the House of Commons, shall pay to the member the allowance to which he is entitled. R.S., c. 147, s. 44.

**44.** There is hereby granted to Her Majesty, out of any unappropriated moneys forming part of the Consolidated Revenue Fund of Canada, an annual sum sufficient to enable Her

Majesty to pay the amount of the sessional allowances hereinbefore mentioned. R.S., c. 147, s. 45.

**45.** All moneys expended under this Act, in respect of the House of Commons, shall be expended and accounted for in the same manner as moneys for defraying the contingent expenses of the House of Commons are to be expended and accounted for under the *House of Commons Act*. R.S., c. 147, s. 46.

**46.** (1) Credits for all sums voted by Parliament and payable in respect of allowances to members of the Senate as hereinbefore provided, and in respect of other expenditure for the service of the Senate, shall issue from time to time.

(2) Such credits shall issue on one of the banks of Canada in favour of the Clerk of the Senate and the assistant accountant of the Senate, or such other persons as the Speaker of the Senate from time to time designates for the purpose.

(3) Such Clerk shall, from time to time, apply for such credits as he deems necessary by an order signed by him. R.S., c. 147, s. 47.

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## SCHEDULE

### FORM A

The evidence you shall give on this examination shall be the truth, the whole truth and nothing but the truth. So help you God.

### FORM B

I, A.B., do solemnly, sincerely and truly affirm and declare the taking of any oath is according to my religious belief unlawful, and I do also solemnly, sincerely and truly affirm and declare, etc.

R.S., c. 147, Sch.

# AN ACT RESPECTING THE HOUSE OF COMMONS.

## SHORT TITLE

**1.** This Act may be cited as the *House of Commons Act*. R.S., c. 145, s. 1.

## DISQUALIFICATIONS OF MEMBERS

**2.** (1) No person who, on the day of the nomination at any election to the House of Commons, is a member of any legislative council or of any legislative assembly of any province that is now or hereafter included within Canada, is eligible as a member of the House of Commons, or is capable of being nominated or voted for at such election, or of being elected to or of sitting or voting in the House of Commons.

(2) If any one so declared ineligible is elected, and returned as a member of the House of Commons, his election is null and void. R.S., c. 145, s. 2.

**3.** If any member of the House of Commons is elected and returned to any legislative assembly, or is elected or appointed a member of any legislative council and accepts the seat, his election as a member of the House of Commons thereupon becomes null and void, his seat shall be vacated, and a new writ shall issue forthwith for a new election. R.S., c. 145, s. 3.

**4.** Any member of the House of Commons elected or appointed to a provincial legislature without his knowledge or consent shall continue to hold his seat in the House of Commons as if no such election or appointment to a provincial legislature had been made, if, without taking his seat in the provincial legislature, and within ten days after being notified of such election or appointment, or, if he is not within the province at the time, then within ten days after his arrival within the province, he resigns his seat in such legislature, and notifies the Speaker of the House of Commons of such resignation. R.S., c. 145, s. 4.

**5.** (1) If any member who is by this Act declared ineligible as a member of the House of Commons, or incapable of sitting or voting therein, so sits or votes, he shall forfeit the sum of two thousand dollars for every day he sits or votes.

(2) Such sum may be recovered by any person who sues for the same, by action in any form allowed by law in the province in which the action is brought, in any court having jurisdiction. R.S., c. 145, s. 5.

#### RESIGNATION OF MEMBERS

**6.** (1) Any member of the House of Commons may resign his seat

(a) by giving, in his place in the House, notice of his intention to resign, in which case, and immediately after such notice has been entered by the clerk on the journals of the House, the Speaker shall forthwith address his warrant, under his hand and seal to the Chief Electoral Officer, for the issue of a writ for the election of a new member in the place of the member resigning, or

(b) by addressing and causing to be delivered to the Speaker a declaration of his intention to resign his seat, made in writing under his hand and seal before two witnesses, which declaration may be so made and delivered either during a session of Parliament, or in the interval between two sessions, in which case the Speaker shall, upon receiving such declaration, forthwith address his warrant, under his hand and seal, to the Chief Electoral Officer, for the issue of a writ for the election of a new member in the place of the member so resigning, and in either case a writ shall issue accordingly.

(2) An entry of the declaration so delivered to the Speaker shall be thereafter made in the journals of the House. R.S., c. 145, s. 6.

**7.** (1) If any member of the House of Commons wishes to resign his seat in the interval between two sessions of Parliament, and there is then no Speaker, or, if the Speaker is absent from Canada, or, if such member is himself the Speaker, he may address or cause to be delivered to any two members of the House the declaration before mentioned of his intention to resign.

(2) Such two members, upon receiving such declaration, shall forthwith address their warrant, under their hands and seals, to the Chief Electoral Officer for the issue of a new writ for the election of a member in the place of the member so

notifying his intention to resign, and such writ shall issue accordingly. R.S., c. 145, s. 7.

**8.** Any member tendering his resignation in any manner hereinbefore provided, shall be held to have vacated his seat and shall cease to be a member of the House. R.S., c. 145, s. 8.

**9.** No member shall tender his resignation while his election is lawfully contested, or until after the expiration of the time during which it may by law be contested on other grounds than corruption or bribery. R.S., c. 145, s. 9.

#### VACANCIES

**10.** If any vacancy happens in the House of Commons by the death of any member, or by his accepting any office, the Speaker, on being informed of such vacancy by any member of the House in his place, or by notice in writing under the hands and seals of any two members of the House, shall forthwith address his warrant to the Chief Electoral Officer, for the issue of a new writ for the election of a member to fill the vacancy; and a new writ shall issue accordingly. R.S., c. 145, s. 10.

**11.** If, when such vacancy happens, or at any time thereafter, before the Speaker's warrant for a new writ has issued, there is no Speaker of the House, or if the Speaker is absent from Canada, or if the member whose seat is vacated is himself the Speaker, then, any two members of the House may address their warrant, under their hands and seals, to the Chief Electoral Officer, for the issue of a new writ for the election of a member to fill such vacancy; and such writ shall issue accordingly. R.S., c. 145, s. 11.

**12.** (1) A warrant may issue to the Chief Electoral Officer for the issue of a new writ for the election of a member of the House of Commons to fill any vacancy arising subsequently to a general election, and before the first meeting of Parliament thereafter, by reason of the death or acceptance of such office of any member.

(2) Such writ may issue at any time after such death or acceptance of office.

(3) The election to be held under such writ does not in any manner affect the rights of any person entitled to contest the previous election.

(4) The report of any judge appointed to try such previous election, or of the Supreme Court of Canada, in case of an appeal, shall determine whether the member who has so died or accepted office, or any other person was duly returned or elected thereat.

(5) The determination, if adverse to the return of such member, and in favour of any other candidate, avoids the election held under this section, and the candidate declared duly elected at the previous election is entitled to take his seat as if no such subsequent election had been held. R.S., c. 145, s. 12.

**13.** (1) In the event of a vacancy occupying a writ shall be issued within six months after the receipt by the Chief Electoral Officer of the warrant for the issue of a new writ for the election of a member of the House of Commons.

(2) This section does not apply where the vacancy in respect of which the warrant has issued occurs within six months of the expiry of the time limited for the duration of the House of Commons.

(3) If Parliament is dissolved after the issue of a new writ hereunder such writ shall thereupon be deemed to have been superseded and withdrawn. R.S., c. 145, s. 13.

**14.** No person shall be nominated and consent to be nominated so as to be a candidate for election as a member of the House of Commons for more than one electoral district at the same time, and if any person is so nominated for more than one electoral district and consents thereto all such nominations are null and void. R.S., c. 145, s. 14.

#### INTERNAL ECONOMY

**15.** The person who fills the office of Speaker at the time of any dissolution of Parliament, shall, for the purpose of the following provisions of this Act, be deemed to be the Speaker until a Speaker is chosen by the new Parliament. R.S., c. 145, s. 15.

**16.** (1) The Governor in Council shall appoint four members of the Queen's Privy Council for Canada who are also members of the House of Commons, who, with the Speaker of the House of Commons, shall be commissioners for the purposes of this section and sections 17 and 18.

(2) The names and offices of such commissioners shall be communicated by messages from the Governor in Council to the House of Commons, in the first week of each session of Parliament.

(3) Three of the commissioners, whereof the Speaker of the House of Commons shall be one, may carry the said provisions into execution.

(4) In the event of the death, disability, or absence from Canada of the Speaker during any dissolution or prorogation of Parliament, any three of the commissioners may carry the said provisions into execution. R.S., c. 145, s. 16.

**17.** (1) An estimate shall annually be prepared by the Clerk of the House of Commons of the sums which will probably be required to be provided by Parliament for the payment of the indemnity and the actual moving or transportation expenses of members, and of salaries, allowances and contingent expenses of the House, and of the several officers and clerks thereof under his direction, during the fiscal year.

(2) The Sergeant-at-Arms of the House of Commons shall annually prepare an estimate of the sums that will probably be required to be provided by Parliament for the payment of salaries or allowances of the messengers, doorkeepers and servants of the House under this direction, and of the contingent expenses under his direction, during such year.

(3) Such estimates shall be submitted to the Speaker for his approval, and are subject to such approval and to such alterations as the Speaker considers proper.

(4) The Speaker shall thereupon prepare an estimate of the sums requisite for the several purposes aforesaid, and shall sign the same.

(5) Such several estimates of the Clerk, Sergeant-at-Arms and Speaker shall be transmitted by the Speaker to the Minister of Finance for his approval, and shall be laid severally before the House of Commons with the other estimates for the year. R.S., c. 145, s. 17.

**18.** All sums of money voted by Parliament upon such estimates or payable to members of the House of Commons under the *Senate and House of Commons Act*, are subject to the order of the commissioners, or any three of them, of whom the Speaker shall be one. R.S., c. 145, s. 18.



**19.** (1) If any complaint or representation is at any time made to the Speaker for the time being of the misconduct or unfitness of any clerk, officer, messenger or other person attendant on the House of Commons, the Speaker may cause an inquiry to be made into the conduct or fitness of such person.

(2) If thereupon it appears to the Speaker that such person has been guilty of misconduct, or is unfit to hold his situation, the Speaker may, if such clerk, officer, messenger or other person has been appointed by the Crown, suspend him and report such suspension to the Governor General, and, if he has not been appointed by the Crown, suspend or remove him. R.S., c. 145, s. 21.

**20.** (1) The Clerk of the House of Commons shall subscribe and take before the Speaker the oath of allegiance, and all other officers, clerks and messengers of the House of Commons shall subscribe and take before the Clerk of the House of Commons the oath of allegiance.

(2) The Clerk of the House of Commons shall keep a register of all such oaths. R.S., c. 145, s. 22.

## MEMBERS' RETIRING ALLOWANCES

### SHORT TITLE

**1.** This Act may be cited as *The Members of Parliament Retiring Allowances Act*.

### INTERPRETATION

- 2.** (1) In this Act,
- (a) "Account" means the Members of Parliament Retiring Allowances Account established by this Act;
  - (b) "member" means a member of the House of Commons;
  - (c) "session" means a session of the Parliament of Canada; and
  - (d) "sessional indemnity" means the allowance that is payable to a member pursuant to sections thirty-three to forty of the *Senate and House of Commons Act* in respect of his attendance at a session.

(2) A House of Commons that is not dissolved before the expiration of the period fixed for its duration shall, for the purposes of this Act, be deemed to be dissolved on the expiration of that period.

### MEMBERS OF PARLIAMENT RETIRING ALLOWANCE ACCOUNT

**3.** (1) There shall be established in the Consolidated Revenue Fund an account to be known as the Members of Parliament Retiring Allowances Account to which shall be credited.

- (a) the contributions paid pursuant to sections six and eight;
- (b) interest paid in accordance with section eight; and
- (c) the amounts specified in section four.

(2) All allowances payable under this Act shall be paid out of the Consolidated Revenue Fund and charged to the Members of Parliament Retiring Allowances Account.

**4.** The Minister of Finance shall, in accordance with the regulations, credit to the Account, in each fiscal year,

- (a) an amount equal to the contributions paid in that fiscal year pursuant to section six;
- (b) an amount equal to the total of the amounts that have become payable in that fiscal year pursuant to subsection one of section eight; and
- (c) an amount representing interest on the balance that is, from time to time, to the credit of the Account.

5. An account shall be kept in respect of each member, in which shall be shown all payments made by him or to him or his legal representatives under this Act.

#### CONTRIBUTIONS

6. A member shall, by reservation from his sessional indemnity, contribute to the Consolidated Revenue Fund six per cent. of the first four thousand dollars payable to him by way of sessional indemnity in each period of twelve months, commencing with the day he became a member.

7. (1) A member may, as prescribed by this section, elect, within one year from the commencement of this Act or from the day on which the House of Commons first is in session after he becomes a member, whichever is the later, to contribute under this Act in respect of any previous session during which he was a member.

(2) Where, after the coming into force of this Act, a member ceases to be a member and subsequently again becomes a member, he may elect to contribute under this Act in respect of a previous session only if

- (a) he previously contributed or elected to contribute under this Act in respect of that session and a withdrawal allowance in respect of that session became payable to him under section 12, or
- (b) he was eligible to make an election in respect of that session but did not so elect and the time for making the election had not expired when he ceased to be a member.

(3) A member who, immediately prior to becoming a member was entitled to an annual allowance under section eleven, may make an election under this section in respect of a prior session only if, when he was previously entitled to elect to contribute in respect of that prior session, he did not do so and the time for doing so had not expired when he previously ceased to be a member.

(4) An election pursuant to this section shall be made to the Minister of Finance in a form prescribed by the regulations and is deemed to be made on the day on which the form, duly signed by the member, is placed in course of delivery to the Minister.

**8.** (1) Where a member elects, pursuant to section seven, to contribute in respect of a previous session, he shall pay into the Consolidated Revenue Fund, in a lump sum or otherwise, at the option of the member,

(a) a contribution equal to

- (i) six per cent. of the amount received by the member by way of sessional indemnity in respect of that session if it was held prior to the commencement of the 7th session of the 21st Parliament, or
- (ii) the withdrawal allowance paid to the member in respect of that session if it was held after the end of the 6th session of the 21st Parliament,

(b) except in respect of the portion of that contribution specified in paragraph (c), interest on that contribution at the rate of four per cent. per annum, compounded annually, from the day on which the final payment by way of sessional indemnity was made to the member in respect of that session to the day on which he makes his election, and

(c) in respect of the portion of that contribution included in a withdrawal allowance paid to him under this Act, interest on the aggregate of

(i) that portion of the contribution, and

(ii) the interest on that portion of the contribution that was included in the withdrawal allowance,

at the rate of four per cent. per annum, compounded annually, from the date of payment of the withdrawal allowance to the day on which he makes his election.

(2) Interest at the rate of four per cent. per annum is payable by a person to the Consolidated Revenue Fund on the balance unpaid from time to time of the amount payable by him under subsection one and if the interest is not paid it may be recovered as a debt due to Her Majesty.

(3) The interest payable by a person under subsection two shall, while he is a member, be paid by reservation from his sessional indemnity.

(4) Where a person becomes entitled to an allowance under section eleven and any part of the amount payable by him under subsection one remains unpaid, he shall pay the balance thereof, together with the interest prescribed by subsection two, by reservation of the full amount of his allowance until the whole is paid, or the balance may otherwise be recovered as a debt due to Her Majesty.

(5) Where the person described in section 12, 13 or 14 has not paid in full the amount payable by him under subsection (1) of this section, the unpaid amount need not be paid; but the interest payable under subsection (2) of this section shall be paid and may be deducted from any withdrawal allowance payable to or in respect of such person.

(6) A person may, at any time while he is not a member, revoke his election under this section with respect to the contributions then owing by him under subsection one by giving to the Minister of Finance a notice of revocation, in a form prescribed by the regulations, and thereupon

- (a) he is not required to pay the amount owing under subsection one to which the revocation applies, but interest is payable on that amount under subsection two to the date of revocation;
- (b) for the purpose of computing an allowance under section eleven, he shall be deemed not to have elected to contribute the amount of the contributions to which the revocation applies and if the allowance has been calculated, it shall be recalculated accordingly; and
- (c) he may not again at any time elect to make those contributions.

**9.** (1) Notwithstanding anything in this Act no contribution shall be paid under this Act by a member

- (a) unless, at the time when the contribution is to be paid, the total amount of the contributions that have been or elected to be paid by him is less than four thousand dollars; or
- (b) in respect of any session in the course of which he was expelled from the House of Commons.

(2) In computing the total amount of the contributions that a member has paid or elected to pay under this Act, there shall not be included

- (a) any contributions in respect of which a withdrawal allowance has been paid under this Act;
- (b) any contributions in respect of which his election has been revoked under subsection six of section eight;
- (c) any amount paid by him by way of interest.

(3) Where a person makes a payment on account of the amount payable by him under subsection one of section eight, the part thereof that is the same proportion of the whole payment as the contribution specified in paragraph (a) of that sub-

section is of the aggregate of the amounts specified in paragraphs (a), (b) and (c) of that subsection is deemed to be paid in respect of the contribution specified in the said paragraph (a).

#### ALLOWANCES

**10.** (1) An allowance shall be paid in accordance with this Act to or in respect of a person who, being a member, ceases to be a member or dies.

(2) For the purposes of this Act,

- (a) a person does not cease to be a member by reason only of the dissolution of the House of Commons, and
- (b) a person who, immediately before a dissolution of the House of Commons, was a member, ceases to be a member if he is not elected as a member at the general election next following the dissolution, and he is deemed to have ceased to be a member on the day on which that general election was held.

**11.** (1) Subject to section fifteen, where a person at the time he ceases to be a member, has contributed or elected to contribute under this Act in respect of sessions in more than two Parliaments, there shall be paid to him annually, during his lifetime, an allowance equal to seventy-five per cent. of the total amount of the contributions that he has paid and elected to pay under this Act.

(2) An allowance payable under this section shall be paid monthly in arrears in approximately equal instalments.

**12.** There shall be paid to a person who has ceased to be a member but has not contributed or elected to contribute under this Act in respect of sessions in more than two Parliaments, a withdrawal allowance, in a lump sum, equal to the aggregate of

- (a) the total amount of the contributions that he has paid under this Act, and
- (b) the interest on those contributions paid under subsection (1) of section 8.

**13.** There shall be paid to a member who is expelled from the House of Commons a withdrawal allowance, in a lump sum, equal to the aggregate of

- (a) the total amount of the contributions that he has paid under this Act, and
- (b) the interest on those contributions paid under subsection (1) of section 8.

**14.** There shall be paid to the legal representative of a member who has died, or of a person who has ceased to be a member and has died, a withdrawal allowance, in a lump sum, equal to the aggregate of

- (a) the total amount of the contributions that he has paid under this Act, and
- (b) the interest on those contributions paid under subsection (1) of section 8,

minus the total of the amounts of allowance under section 11 that have been paid or have become payable to him prior to his death.

**15.** (1) An allowance payable to a person under section eleven shall be discontinued while that person

- (a) is a Senator or a member,
- (b) is employed in the public service of Canada, or
- (c) renders services the remuneration for which is paid out of the Consolidated Revenue Fund or by an agent of Her Majesty in right of Canada,

and where that person is a Senator or member, or is so employed or renders service at any time during a month, the whole amount payable on account of the allowance in that month shall be withheld.

(2) For the purposes of this section a person is deemed to be employed in the public service of Canada who

- (a) is a member of the staff of the Senate or House of Commons,
- (b) holds any office or employment under Her Majesty in right of Canada, or
- (c) is an officer, member or employee of a corporation, board or commission that is an agent of Her Majesty in right of Canada.

**16.** Where a person who is entitled to be paid an allowance under section eleven

- (a) is eligible to receive a pension under the *Old Age Security Act*, the amount of the allowance that would otherwise be payable to him in any month under section eleven shall be reduced by the amount of the pension that is payable to him in that month under the *Old Age Security Act* or would be so payable if he applied for it; or
- (b) is in receipt of an annuity, pension or allowance payable out of the Consolidated Revenue Fund or by an agent

of Her Majesty pursuant to a retirement pension scheme to which persons who may benefit therefrom are not required to contribute and the amount of which, except for determining eligibility to receive benefits, is not related to length of service, the amount of the allowance that would otherwise be payable to him in any month under section eleven shall be reduced by the amount of the annuity, pension or allowance that is payable to him in that month under the pension scheme, or, if it is not paid monthly, the amount that the Treasury Board deems to be payable in respect of that month.

- 17.** The Governor in Council may make regulations
- (a) prescribing for the purpose of section four the rate of interest, the manner of calculating interest and the times at which interest shall be credited to the Account;
  - (b) prescribing, in the case of an annual allowance, the days on which the payments of allowances shall be made and providing that payment may be made in respect of any fractional period and that where a recipient dies payment may be made in respect of the full month in which he dies;
  - (c) providing, where a recipient of an annual allowance is incapable of managing his affairs, that the allowance may be paid to another person on his behalf;
  - (d) prescribing forms that are by this Act to be prescribed or that he considers necessary for the administration of this Act; and
  - (e) for any purpose deemed necessary to give effect of this Act.

#### REPORT

**18.** The Minister of Finance shall, as soon as possible after the end of each fiscal year, lay before Parliament a report on the administration of this Act during the preceding fiscal year and shall include therein a statement of the amounts received by way of contributions and interest under this Act, the amounts paid by way of allowances, the number of contributors, the number of persons receiving annual allowances, and such other information as the Governor in Council prescribes.

**19.** This Act shall come into force on the date of the opening of the session of Parliament next ensuing after the date of the Royal Assent thereto.

(This Act was passed in the Session of 1952, amended in 1954 and 1955.)



# THE BRITISH NORTH AMERICA ACT, 1867<sup>(6)</sup>

(As amended)

## 30-31 VICTORIA, CHAPTER 3

**An Act for the Union of Canada, Nova Scotia, and New Brunswick, and the Government thereof; and for Purposes connected therewith.**

[29th March, 1867.]

Annotated by Maurice Ollivier, Q.C., LL.D., F.R.S.C., Parliamentary Counsel, House of Commons.

(Consolidation)

WHEREAS the Provinces of Canada, Nova Scotia, and New Brunswick have expressed their Desire to be federally united into One Dominion under the Crown of the United Kingdom of Great Britain and Ireland<sup>(7)</sup>, with a Constitution similar in Principle to that of the United Kingdom:

And whereas such a Union would conduce to the Welfare of the Provinces and promote the Interests of the British Empire:

And whereas on the Establishment of the Union by Authority of Parliament it is expedient, not only that the Constitution of the Legislative Authority in the Dominion be provided for, but also that the Nature of the Executive Government therein be declared:

And whereas it is expedient that Provision be made for the eventual admission into the Union of other Parts of British North America: (8)

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(6) "The B.N.A. Act, 1867, was drafted upon the basis of the London Resolutions of 1866-67 by the London Conference of delegates of the three provinces. . . . The Act, as a whole, is as much the work of the London Conference as any or all of the resolutions prepared in advance of it and for its purposes." Report to the Speaker of the Senate (session of 1939) by the Parliamentary Counsel (W. F. O'Connor), Annex I, page 5.

(7) The Imperial Conference of 1926 unanimously recommended that His Majesty's title should be "George V, by the Grace of God, of Great Britain, Ireland and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India."

The *Royal and Parliamentary Titles Act, 1927*, which provided for the alteration of the Royal Style and Titles was assented to on the 12th of April, 1927 and in chapter 4 of the statutes of the U.K. of G.B. and Northern Ireland for the year. See also chapter 72 of the Statutes of Canada, 1947 and also chapter 9 of the Statutes of Canada, 1952-53.

(8) The enacting clause was repealed by the Statute Law Revision Act, 1893, 56 Victoria, chapter 14, of the statutes of the United Kingdom of Great Britain and Ireland. It was as follows:—

*"Be it therefore enacted and declared by the Queen's most Excellent Majesty, by and with the advice and Consent of the Lords Spiritual*

## I. PRELIMINARY

**1.** This Act may be cited as the British North America Act, 1867:

**2.** Repealed. See Note <sup>(9)</sup> below.

## II. UNION

**3.** It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, to declare by Proclamation that, on and after a Day therein appointed, not being more than Six Months after the passing of this Act, the Provinces of Canada, of Nova Scotia, and New Brunswick shall form and be One Dominion under that Name accordingly.

**4.** ..... unless it is otherwise expressed or implied, the Name Canada shall be taken to mean Canada as constituted under this Act.<sup>(10)</sup>

**5.** Canada shall be divided into Four Provinces, named Ontario, Quebec, Nova Scotia, and New Brunswick.<sup>(11)</sup>

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*and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, as follows:—*

<sup>(9)</sup> Section 2 was repealed by the Statute Law Revision Act of 1893 (chapter 14). It read as follows:—

*"2. The provisions of this Act referring to Her Majesty the Queen extend also to the Heirs and Successors of Her Majesty, Kings and Queens of the United Kingdom of Great Britain and Ireland."*

<sup>(10)</sup> Part of section 4 was repealed by the Statute Law Revision Act of 1893 (chapter 14). The lines repealed read as follows:—

*"4. The subsequent provisions of this Act, shall unless it is otherwise expressed or implied, commence and have effect on and after the Union, that is to say, on and after the Day appointed for the Union taking effect in the Queen's Proclamation: and in the same Provisions,"*

<sup>(11)</sup> The Province of Manitoba was formed and representation granted to it in the Senate and in the House of Commons by *The Rupert's Land Act, 1868* (31-32 Vict., c. 105 (U.K.) and *The Manitoba Act, 1870* (33 Vict., c. 3 (Canada)).

The Province of British Columbia became part of the Union and was admitted to Confederation by order of Her Majesty Queen Victoria in Council dated the 16th day of May, 1871.

The power to establish additional Provinces in the Dominion was conferred by *The British North America Act, 1871* (34-35 Vict., c. 28).

Prince Edward Island was admitted to the Union by order of Her Majesty in Council 1873.

The Provinces of Alberta and Saskatchewan were respectively established by 4-5 Edw. VII, cc. 3 and 42 (Canada).

Provision was made by these Orders in Council and Statutes for the representation of the various Provinces admitted, in the Senate and in the House of Commons of Canada.

The Province of Newfoundland was added on March 31, 1949, by *The British North America Act 1949*. (U.K., 12-13 Geo. VI, c. 22).

**6.** The Parts of the Province of Canada (as it exists at the passing of this Act) which formerly constituted respectively the Provinces of Upper Canada and Lower Canada shall be deemed to be severed, and shall form two separate Provinces. The Part which formerly constituted the Province of Upper Canada shall constitute the Province of Ontario; and that Part which formerly constituted the Province of Lower Canada shall constitute the Province of Quebec.

**7.** The Provinces of Nova Scotia and New Brunswick shall have the same Limits as at the passing of this Act.

**8.** In the general Census of the population of Canada which is hereby required to be taken in the Year One thousand eight hundred and seventy-one, and in every Tenth Year thereafter, the respective Populations of the Four Provinces shall be distinguished.

**9.** The Executive Government and authority of and over Canada is hereby declared to continue and be vested in the Queen.

**10.** The Provisions of this Act referring to the Governor General extend and apply to the Governor General for the Time being of Canada, or other the Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the name of the Queen, by whatever Title he is designated.<sup>(12)</sup>

**11.** There shall be a Council to aid and advise in the Government of Canada, to be styled the Queen's Privy Council for Canada; and the Persons who are to be Members of that Council shall be from Time to Time chosen and summoned by the Governor General and sworn in as Privy Councillors, and Members thereof may be from Time to Time removed by the Governor General.

**12.** All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, are at the Union vested in or

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<sup>(12)</sup> The position of Governor General was defined in the Report of the Imperial Conference of 1926 (page 14) and the Report of the Conference of 1930 provided for the constitutional practice *in re* responsibility, communications, manner and instruments of appointment (pages 26 and 27).

exercisable by the respective Governors or Lieutenant Governors of those Provinces, with the Advice, or with the Advice and Consent, of the respective Councils thereof, or in conjunction with those Governors or Lieutenant-Governors individually, shall, as far as the same continue in existence and capable of being exercised after the Union in relation to the Government of Canada, be vested in and exercisable by the Governor General, with the Advice or with the Advice and Consent of or in conjunction with the Queen's Privy Council for Canada, or any Members thereof, or by the Governor General individually, as the case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland) to be abolished or altered by the Parliament of Canada.

**13.** The Provisions of this Act referring to the Governor in Council shall be construed as referring to the Governor General acting by and with the Advice of the Queen's Privy Council for Canada.

**14.** It shall be lawful for the Queen, if Her Majesty thinks fit, to authorize the Governor General from Time to Time to appoint any Person or any Persons jointly or severally to be his Deputy or Deputies within any Part or Parts of Canada, and in that Capacity to exercise during the Pleasure of the Governor General such of the Powers, Authorities, and Functions of the Governor General as the Governor General deems it necessary or expedient to assign to him or them, subject to any Limitations or Directions expressed or given by the Queen; but the Appointment of such a Deputy or Deputies shall not affect the Exercise by the Governor General himself of any Power, Authority, or Function.

**15.** The Commander-in-Chief of the Land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen.

**16.** Until the Queen otherwise directs the Seat of Government of Canada shall be Ottawa.

#### IV. LEGISLATIVE POWER

**17.** There shall be One Parliament for Canada, consisting of the Queen, an Upper House styled the Senate, and the House of Commons.

**18.** The privileges, immunities, and powers to be held, enjoyed and exercised by the Senate and by the House of Commons, and by the Members thereof respectively, shall be such as are from time to time defined by Act of the Parliament of Canada, but so that any Act of the Parliament of Canada defining such privileges, immunities, and powers shall not confer any privileges, immunities, or powers, exceeding those at the passing of such Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland, and by the Members thereof.<sup>(13)</sup>

**19.** The Parliament of Canada shall be called together not later than Six months after the Union.

**20.** There shall be a Session of the Parliament of Canada once at least in every year, so that Twelve Months shall not intervene between the last Sitting of the Parliament in one Session and its first Sitting in the next Session.

#### *The Senate*

**21.** The Senate shall, subject to the Provisions of this Act, consist of Seventy-two Members, who shall be styled Senators.<sup>(14)</sup>

**22.** In relation to the Constitution of the Senate, Canada shall be deemed to consist of Three Divisions:

1. Ontario;
2. Quebec;
3. The Maritime Provinces, Nova Scotia and New Brunswick; which Three Divisions shall (subject to the Provisions of this Act) be equally represented in the Senate as follows: On-

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(13) Section 18 dealing with the privileges, immunities, etc., of both Houses was repealed on 1875 and section 18 above was substituted therefor. The repealed section formerly read as follows:—

*"18. The Privileges, Immunities, and Powers to be held, enjoyed, and exercised by the Senate and by the House of Commons and by the Members thereof respectively shall be such as are from Time to Time defined by Act of the Parliament of Canada, but so that the same shall never exceed those at the passing of this Act held, enjoyed, and exercised by the Commons House of Parliament of the United Kingdom of Great Britain and Ireland and by the Members thereof."*

*See also section 4 of the Senate and House of Commons Act, R.S., 1927, chapter 147 in Part V of this volume.*

(14) The number of senators has now been increased to 102 but it is provided that the number shall not at any time exceed one hundred and four.

This was done by the British North America Act, 1915 (5-6 George V, chapter 45), and by the British North America Act, (No. 1), 1949 (12-13 George VI, chapter 22). See these Acts for further information, at pages 55 and 65.

tario by Twenty-four Senators; Quebec by Twenty-four Senators; and the Maritime Provinces by Twenty-four Senators, Twelve thereof representing Nova Scotia, and Twelve thereof representing New Brunswick.

In the case of Quebec each of the Twenty-four Senators representing that Province shall be appointed for One of the Twenty-four Electoral Divisions of Lower Canada specified in Schedule A. to Chapter One of the Consolidated Statutes of Canada.<sup>(15)</sup>

**23.** The Qualification of a Senator shall be as follows:

- (1) He shall be of the full age of Thirty Years;
- (2) He shall be either a Natural-born Subject of the Queen, or a Subject of the Queen naturalized by an Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of One of the Provinces of Upper Canada, Lower Canada, Canada, Nova Scotia, or New Brunswick, before the Union, or of the Parliament of Canada, after the Union;
- (3) He shall be legally or equitably seised as of Freehold for his own Use and Benefit of Lands or Tenements held in free and common Socage, or seised or possessed for his own Use and Benefit of Lands or Tenements held in Francalleu or in Roture, within the Province for which he is appointed, of the Value of Four thousand Dollars, over and above all Rents, Dues, Debts, Charges, Mortgages, and Incumbrances due or payable out of or charged on or affecting the same;
- (4) His Real and Personal Property shall be together worth Four thousand Dollars over and above his Debts and Liabilities;
- (5) He shall be resident in the Province for which he is appointed;
- (6) In the case of Quebec he shall have his Real Property Qualification in the Electoral Division for which he is appointed, or shall be resident in that Division.

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<sup>(15)</sup> The Senate now includes representatives of Prince Edward Island and also a fourth division comprising the western provinces of Manitoba, British Columbia, Alberta and Saskatchewan, and also six senators from Newfoundland.

The Parliament of Canada may provide for representation in the Senate and in the House of Commons of any territories which are not in any province. See B.N.A. Act, 1886. (49-50 Vict., ch. 35).

**24.** The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon qualified Persons to the Senate; and, subject to the Provisions of this Act, every Person so summoned shall become and be a Member of the Senate and a Senator.

**25.** Repealed.

**26.** If at any Time on the Recommendation of the Governor General the Queen thinks fit to direct that Three or Six Members be added to the Senate, the Governor General may by Summons to *Three or Six* qualified Persons (as the Case may be), representing equally the *Three* Divisions of Canada, add to the Senate accordingly.<sup>(16)</sup>

**27.** In case of such Addition being at any Time made the Governor General shall not summon any Person to the Senate, except on a further like Direction by the Queen on the like Recommendation, until each of the *Three* Divisions of Canada is represented by Twenty-four Senators and no more.<sup>(17)</sup>

**28.** The Number of Senators shall not at any Time exceed *Seventy-eight*.<sup>(18)</sup>

**29.** A Senator shall, subject to the Provisions of this Act, hold his Place in the Senate for Life.

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(16) The number of persons who may be summoned to the Senate has been increased from three or six to four or eight representing equally the four divisions of Canada.

See section one of the British North America Act of 1915 (5-6 George V, chapter 45), subparagraph (iii) of section one of which reads as follows:—

“(iii) *The number of persons whom by section twenty-six of the said Act the Governor General of Canada may, upon the direction of His Majesty the King, add to the Senate is increased from three or six to four or eight, representing equally the four divisions of Canada.*”

(17) The Act of 1915, above mentioned, supersedes this section by the enactment of subparagraph (iv) of section one which reads as follows:—

“(iv) *In case of such addition being at any time made the Governor General of Canada shall not summon any person to the Senate except upon a further like direction by His Majesty the King on the like recommendation to represent one of the four Divisions until such Division is represented by twenty-four senators and no more.*”

(18) Subparagraph (v) of subsection one of section one of the B.N.A. Act of 1915 which supersedes section 28 reads as follows:—

“(v) The number of Senators shall not at any time exceed one hundred and four.”

See also note to section 147. It is provided in the Act of 1915 that in the case of the admission of Newfoundland to the Union that “*the normal number of Senators shall be one hundred and two, and their maximum number one hundred and ten.*”

**30.** A Senator may by Writing under his Hand addressed to the Governor General resign his Place in the Senate, and thereupon the same shall be vacant.

**31.** The Place of a Senator shall become vacant in any of the following Cases:—

- (1) If for Two consecutive Sessions of the Parliament he fails to give his Attendance in the Senate;
- (2) If he takes an Oath or makes a Declaration or Acknowledgment of Allegiance, Obedience, or Adherence to a Foreign Power, or does an Act whereby he becomes a Subject or Citizen, or entitled to the Rights or Privileges of a Subject or Citizen, of a Foreign Power;
- (3) If he is adjudged Bankrupt or Insolvent, or applies for the Benefit of any Law relating to Insolvent Debtors, or becomes a public Defaulter;
- (4) If he is attainted of Treason or convicted of Felony or of any infamous Crime;
- (5) If he ceases to be qualified in respect of Property or of Residence; provided, that a Senator shall not be deemed to have ceased to be qualified in respect of Residence by reason only of his residing at the Seat of the Government of Canada while holding an Office under that Government requiring his Presence there.

**32.** When a vacancy happens in the Senate, by Resignation, Death, or otherwise, the Governor General shall by Summons to a fit and qualified Person fill the Vacancy.

**33.** If any Question arises respecting the Qualification of a Senator or a Vacancy in the Senate the same shall be heard and determined by the Senate.

**34.** The Governor General may from Time to Time, by Instrument under the Great Seal of Canada, appoint a Senator to be Speaker of the Senate, and may remove him and appoint another in his Stead.

**35.** Until the Parliament of Canada otherwise provides, the Presence of at least Fifteen Senators, including the Speaker, shall be necessary to constitute a Meeting of the Senate for the Exercise of its Powers.

**36.** Questions arising in the Senate shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the Negative.



*The House of Commons*

**37.** The House of Commons shall, subject to the Provisions of this Act, consist of One hundred and eighty-one Members, of whom Eighty-two shall be elected for Ontario, Sixty-five for Quebec, Nineteen for Nova Scotia, and Fifteen for New Brunswick.<sup>(19)</sup>

**38.** The Governor General shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of Canada, summon and call together the House of Commons.

**39.** A Senator shall not be capable of being elected or of sitting or voting as a Member of the House of Commons.

**40.** *Until the Parliament of Canada otherwise provides, Ontario, Quebec, Nova Scotia, and New Brunswick shall, for the Purposes of the Election of Members to serve in the House of Commons, be divided into Electoral Districts as follows:—*<sup>(20)</sup>

*1. Ontario*

*Ontario shall be divided into the Counties, Ridings of Counties, Cities, Parts of Cities, and Towns enumerated in the First Schedule to this Act, each whereof shall be an Electoral District, each such District as numbered in that Schedule being entitled to return One member.*

*2. Quebec*

*Quebec shall be divided into Sixty-five Electoral Districts, composed of the Sixty-five Electoral Divisions into which Lower Canada is at the passing of this Act divided under Chapter Two of the Consolidated Statutes of Canada, Chapter Seventy-five of the Consolidated Statutes for Lower Canada, and the Act of the Province of Canada of the Twenty-third Year of the Queen,*

<sup>(19)</sup> These numbers have been considerably altered under section 51 of this Act. The basis of redistribution has been changed by the Imperial Act of 1946 (see p. 63). A new Act respecting the readjustment of representation was passed by the Parliament of Canada in 1952. (See page 68).

<sup>(20)</sup> The Act passed in 1952 respecting the readjustment of representation in the House of Commons is now chapter 304 of the Revised Statutes of Canada, 1952. Consequential to this Act a new Representation Act was passed by Parliament (chapter 48 of the Statutes of 1952, and now chapter 334 of the Revised Statutes of Canada 1952).

In accordance with the said Act there are now 85 members for Ontario, 75 for Quebec, 12 for Nova Scotia, 10 for New Brunswick, 14 for Manitoba, 22 for British Columbia, 4 for Prince Edward Island, 17 for Saskatchewan, 17 for Alberta, 7 for Newfoundland, 1 for the Yukon, 1 for the Mackenzie District and the Northwest Territories, in all 265 members.

*Chapter One, or any other Act amending the same in force at the Union, so that each such Electoral Division shall be for the Purposes of this Act an Electoral District entitled to return One Member.*

### 3. Nova Scotia

*Each of the Eighteen Counties of Nova Scotia shall be an Electoral District. The County of Halifax shall be entitled to return Two Members, and each of the other Counties One Member.*

### 4. New Brunswick

*Each of the Fourteen Counties into which New Brunswick is divided, including the City and County of St. John, shall be an Electoral District. The City of St. John shall also be a separate Electoral District. Each of those Fifteen Electoral Districts shall be entitled to return One Member.*

**41.** *Until the Parliament of Canada, otherwise provides, all Laws in force in the several Provinces at the Union relative to the following Matters or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the House of Assembly or Legislative Assembly in the several Provinces, the Voters at Elections of such Members, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which Elections may be continued, the Trial of controverted Elections, and Proceedings incident thereto, the vacating of Seats of Members, and the Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elections of Members to serve in the House of Commons for the same several Provinces.*

*Provided that, until the Parliament of Canada otherwise provides, at any Election for a Member of the House of Commons for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householder, shall have a Vote.<sup>(21)</sup>*

**42.** Repealed.

**43.** Repealed.

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(21) See Act, chapter 23 of the Revised Statutes of Canada, 1955 (as amended), for qualifications of voters at elections to the House of Commons.

**44.** The House of Commons on its first assembling after a General Election shall proceed with all practicable Speed to elect One of its Members to be Speaker.

**45.** In case of a Vacancy happening in the Office of Speaker by Death, Regulation, or otherwise, the House of Commons shall with all practicable Speed proceed to elect another of its Members to be Speaker.

**46.** The Speaker shall preside at all Meetings of the House of Commons.

**47.** Until the Parliament of Canada otherwise provides, in case of the Absence for any Reason of the Speaker from the Chair of the House of Commons for a period of Forty-eight consecutive Hours, the House may elect another of its Members to act as Speaker, and the Member so elected shall during the Continuance of such Absence of the Speaker have and execute all the Powers, Privileges, and Duties of Speaker.

**48.** The Presence of at least Twenty Members of the House of Commons shall be necessary to constitute a Meeting of the House for the Exercise of its Powers; and for that purpose the Speaker shall be reckoned as a Member.

**49.** Questions arising in the House of Commons shall be decided by a Majority of Voices other than that of the Speaker, and when the Voices are equal, but not otherwise, the Speaker shall have a Vote.

**50.** Every House of Commons shall continue for Five Years from the Day of the Return of the Writs for choosing the House (subject to be sooner dissolved by the Governor General), and no longer.

**51.** (1) Subject as hereinafter provided, the number of members of the House of Commons shall be two hundred and sixty-three and the representation of the provinces therein shall forthwith upon the coming into force of this section and thereafter on the completion of each decennial census be readjusted by such authority, in such manner, and from such time as the Parliament of Canada from time to time provides, subject and according to the following rules:

1. There shall be assigned to each of the provinces a number of members computed by dividing the total population of the provinces by two hundred and sixty-one and by

dividing the population of each province by the quotient so obtained, disregarding, except as hereinafter in this section provided, the remainder, if any, after the said process of division.

2. If the total number of members assigned to all the provinces pursuant to rule 1 is less than two hundred and sixty-one, additional members shall be assigned to the provinces (one to a province) having remainders in the computation under rule 1 commencing with the province having the largest remainder and continuing with the other provinces in the order of the magnitude of their respective remainders until the total number of members assigned is two hundred and sixty-one.

3. Notwithstanding anything in this section, if upon completion of a computation under rules 1 and 2, the number of members to be assigned to a province is less than the number of senators representing the said province, rules 1 and 2 shall cease to apply in respect of the said province, and there shall be assigned to the said province a number of members equal to the said number of senators.

4. In the event that rules 1 and 2 cease to apply in respect of a province then, for the purpose of computing the number of members to be assigned to the provinces in respect of which rules 1 and 2 continue to apply, the total population of the provinces shall be reduced by the number of the population of the province in respect of which rules 1 and 2 have ceased to apply and the number two hundred and sixty-one shall be reduced by the number of members assigned to such province pursuant to rule 3.

5. On any such readjustment the number of members for any province shall not be reduced by more than fifteen per cent. below the representation to which such province was entitled under rules 1 to 4 of this subsection at the last preceding readjustment of the representation of that province, and there shall be no reduction in the representation of any province as a result of which that province would have a smaller number of members than any other province that according to the results of the then last decennial census did not have a larger population; but for the purposes of any subsequent readjustment of representation under this section any increase in the number of members of the House of Commons resulting from the application of

this rule shall not be included in the divisor mentioned in rules 1 to 4 of this subsection.

6. Such readjustment shall not take effect until the termination of the then existing Parliament.

(2) The Yukon Territory as constituted by chapter 41 of the statutes of Canada, 1901, shall be entitled to one member, and such other part of Canada not comprised within a province as may from time to time be defined by the Parliament of Canada shall be entitled to one member. (22)

**51A.** Notwithstanding anything in this Act a province shall always be entitled to a number of members in the House of Commons not less than the number of senators representing such province.<sup>(23)</sup>

**52.** The Number of Members of the House of Commons may be from Time to Time increased by the Parliament of Canada, provided the proportionate Representation of the Provinces prescribed by this Act is not thereby disturbed.

*Money Votes; Royal Assent*

**53.** Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.

**54.** It shall not be lawful for the House of Commons to adopt or pass any Vote, Resolution, Address, or Bill for the Appropriation of any Part of the Public Revenue, or of any Tax or Impost, to any Purpose that has not been first recommended to that House by Message of the Governor General in the Session in which such Vote, Resolution, Address, or Bill is proposed.

**55.** Where a Bill passed by the Houses of Parliament is presented to the Governor General for the Queen's Assent, he shall declare, according to his Discretion, but subject to the

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(22) This section is new. The British North America Act, 1952, by which it was enacted, was assented to on the 18th of June, 1952. (This is now ch. 304 of the Revised Statutes of 1952).

(23) Section 51A was added to the Act of 1867 by the British North America Act of 1915 (5-6 George V, chapter 45, section 2).

Provisions of this Act and to Her Majesty's Instructions, either that he assents thereto in the Queen's Name, or that he withholds the Queen's Assent, or that he reserves the Bill for the Signification of the Queen's Pleasure.<sup>(24)</sup>

**56.** Where the Governor General assents to a Bill in the Queen's Name, he shall by the first convenient Opportunity send an authentic Copy of the Act to one of Her Majesty's Principal Secretaries of State, and if the Queen in Council within Two Years after Receipt thereof by the Secretary of State thinks fit to disallow the Act, such Disallowance (with a Certificate of the Secretary of State of the Day on which the Act was received by him) being signified by the Governor General, by Speech or Message to each of the Houses of the Parliament or by Proclamation, shall annul the Act from and after the Day of such Signification.<sup>(25)</sup>

**57.** A Bill reserved for the Signification of the Queen's Pleasure shall not have any force unless and until within Two Years from the Day on which it was presented to the Governor General for the Queen's Assent, the Governor General signifies, by Speech or Message to each of the Houses of the Parliament or by Proclamation, that it has received the Assent of the Queen in Council.

An Entry of every such Speech, Message, or Proclamation shall be made in the Journal of each House, and a Duplicate thereof duly attested shall be delivered to the proper Officer to be kept among the Records of Canada.<sup>(26)</sup>

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<sup>(24)</sup> The Conference on the Operation of Dominion Legislation, etc., held in London in 1929, "applying the principles laid down in the Imperial Conference Report of 1926," recommended that His Majesty's Government in the United Kingdom do not advise His Majesty to give the Governor General any instructions to reserve Bills presented to him for assent and that it would not be in accordance with constitutional practice for advice to be tendered to His Majesty against the views of the Government of the Dominion. "It is the right of the Government of each Dominion to advise the Crown in all matters relating to its own affairs." *Report of the Conference on the Operation of Dominion Legislation and Merchant Shipping Legislation, 1929* (p. 19).

The Imperial Conference of 1940 passed a resolution approving the Report of the Conference on the Operation of Dominion Legislation and it was stated that the said Report was to be regarded as forming part of the Report of the Conference of 1930. (*See Imperial Conference 1930, Summing up Proceedings, page 19.*)

<sup>(25)</sup> "The present constitutional position is that the power of disallowance can no longer be exercised in relation to Dominion legislation." *Report of the Conference on the Operation of Dominion Legislation, etc.,* (p. 20).

<sup>(26)</sup> See Note (24) to section 55.

## V. PROVINCIAL CONSTITUTION

*Executive Power*

**58.** For each Province there shall be an Officer, styled the Lieutenant-Governor, appointed by the Governor General in Council by Instrument under the Great Seal of Canada.

**59.** A Lieutenant-Governor shall hold Office during the Pleasure of the Governor General; but any Lieutenant-Governor appointed after the Commencement of the First Session of the Parliament of Canada shall not be removable within Five Years from his Appointment, except for Cause assigned, which shall be communicated to him in Writing within One Month after the Order for his Removal is made, and shall be communicated by Message to the Senate and to the House of Commons within One Week thereafter if the Parliament is then sitting, and if not then within One Week after the Commencement of the next Session of the Parliament.

**60.** The Salaries of the Lieutenant-Governors shall be fixed and provided by the Parliament of Canada.

**61.** Every Lieutenant-Governor shall, before assuming the Duties of his Office, make and subscribe before the Governor General or some Person authorized by him, Oaths of Allegiance and Office similar to those taken by the Governor General.

**62.** The Provisions of this Act referring to the Lieutenant-Governor extend and apply to the Lieutenant-Governor for the Time being of each Province or other the Chief Executive Officer or Administrator for the Time being carrying on the Government of the Province, by whatever Title he is designated.

**63.** The Executive Council of Ontario and of Quebec shall be composed of such Persons as the Lieutenant-Governor from Time to Time thinks fit, and in the first instance of the following Officers, namely,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, within Quebec, the Speaker of the Legislative Council and the Solicitor General.<sup>(27)</sup>

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(27) For Ontario, see R.S.O., 1950, c. 121.

For Quebec, see R.S.Q., 1941, c. 7; 1942, c. 55; 1943, c. 39; 1944, c. 32; 1946, cc. 11, 22; 1949, c. 16; 1950, c. 16; 1952-53, cc. 16, 38, 39, 40.

It was not necessary to provide for the Executive Councils of Nova Scotia and New Brunswick whose constitutions were to continue as they existed.

**64.** The Constitution of the Executive Authority in each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.<sup>(28)</sup>

**65.** All Powers, Authorities, and Functions which under any Act of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland, or of the Legislature of Upper Canada, Lower Canada, or Canada, were or are before or at the Union vested in or exercisable by the respective Governors or Lieutenant-Governors of those Provinces, with the Advice or with the Advice and Consent of the respective Executive Councils thereof, or in conjunction with those Councils, or with any Number of Members thereof, or by those Governors or Lieutenant-Governors individually, shall, as far as the same are capable of being exercised after the Union in relation to the Government of Ontario and Quebec respectively, be vested in and shall or may be exercised by the Lieutenant-Governor of Ontario and Quebec respectively, with the Advice or with the Advice and Consent of or in conjunction with the respective Executive Councils, or any members thereof or by the Lieutenant-Governor individually, as the Case requires, subject nevertheless (except with respect to such as exist under Acts of the Parliament of Great Britain, or of the Parliament of the United Kingdom of Great Britain and Ireland), to be abolished or altered by the respective Legislatures of Ontario and Quebec.<sup>(29)</sup>

**66.** The Provisions of this Act referring to the Lieutenant-Governor in Council shall be construed as referring to the Lieutenant-Governor of the Province acting by and with the Advice of the Executive Council thereof.

**67.** The Governor General in Council may from Time to Time appoint an Administrator to execute the Office and Functions of Lieutenant-Governor during his Absence, Illness, or other Inability.

**68.** Unless and until the Executive Government of any Province otherwise directs with respect to that Province, the Seats of Government of the Provinces shall be as follows,

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(28) For Nova Scotia, see 1954, c. 89 of the Statutes of N.S.

For New Brunswick, see R.S.N.B., 1952, c. 75; 1954, c. 39; 1955, c. 46; 1927, c. 10; 1936, c. 10; 1944, c. 10; 1947, c. 19.

(29) No provision is made for the Maritimes for the reason mentioned in Note (27).



namely,—of Ontario, the City of Toronto; of Quebec, the City of Quebec; Nova Scotia, the City of Halifax; and of New Brunswick, the City of Fredericton.

*Legislative Power*<sup>(30)</sup>

1. ONTARIO

**69.** There shall be a Legislature for Ontario consisting of the Lieutenant-Governor and of One House, styled the Legislative Assembly of Ontario.

**70.** The Legislative Assembly of Ontario shall be composed of Eighty-two Members, to be elected to represent the Eighty-two Electoral Districts set forth in the First Schedule to this Act.<sup>(31)</sup>

2. QUEBEC

**71.** There shall be a Legislature for Quebec consisting of the Lieutenant-Governor and of Two Houses, styled the Legislative Council of Quebec and the Legislative Assembly of Quebec.

**72.** The Legislative Council of Quebec shall be composed of Twenty-four Members, to be appointed by the Lieutenant-Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, one being appointed to represent each of the Twenty-four Electoral Divisions of Lower Canada in this Act referred to, and each holding Office for the Term of his Life, unless the Legislature of Quebec otherwise provides under the Provisions of this Act.<sup>(32)</sup>

**73.** The Qualifications of the Legislative Councillors of Quebec shall be the same as those of the Senators for Quebec.<sup>(33)</sup>

**74.** The Place of a Legislative Councillor of Quebec shall become vacant in the Cases, *mutatis mutandis*, in which the Place of Senator becomes vacant.

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(30) "The constitutions of Quebec and Ontario rest upon statute law, which is the reason why about a third of the B.N.A. Act consists of enactments specially relating to these two provinces." W. F. O'Connor, *op cit.*, Annex I, p. 6.

(31) The number of members is now 98, see S.O., 1954, c. 48, s. 2.  
(32) See the Legislature Act, chapter 4 of the R.S.Q., 1941; 1944, c. 6; 1945, cc. 12, 14; 1946, c. 11; 1947, c. 20; 1948, c. 14; 1951-52, c. 18; 1952-53, cc. 37, 38; 1953-54, c. 42; 1954-55, c. 28, *in re* the Legislative Council (composition, Speaker and officers), sections 6 to 18.

(33) See, as regards qualifications, sections 7 and 8 of chapter 4 of the R.S.Q., 1941.

**75.** When a Vacancy happens in the Legislative Council of Quebec by Resignation, Death, or otherwise, the Lieutenant-Governor, in the Queen's Name, by Instrument under the Great Seal of Quebec, shall appoint a fit and qualified Person to fill the Vacancy.

**76.** If any question arises respecting the Qualification of a Legislative Councillor of Quebec, or a Vacancy in the Legislative Council of Quebec, the same shall be heard and determined by the Legislative Council.

**77.** The Lieutenant-Governor may from Time to Time, by Instrument under the Great Seal of Quebec, appoint a Member of the Legislative Council of Quebec to be Speaker thereof, and may remove him and appoint another in his stead.<sup>(34)</sup>

**78.** Until the Legislature of Quebec otherwise provides, the Presence of at least Ten Members of the Legislative Council, including the Speaker, shall be necessary to constitute a Meeting for the Exercise of its Powers.

**79.** Questions arising in the Legislative Council of Quebec shall be decided by a Majority of Voices, and the Speaker shall in all Cases have a Vote, and when the Voices are equal the Decision shall be deemed to be in the negative.

**80.** *The Legislative Assembly of Quebec shall be composed of Sixty-five Members, to be elected to represent the Sixty-five Electoral Divisions or Districts of Lower Canada in this Act referred to, subject to Alteration thereof by the Legislature of Quebec: Provided that it shall not be lawful to present to the Lieutenant-Governor of Quebec for Assent any Bill for altering the Limits of any of the Electoral Divisions or Districts mentioned in the Second Schedule to this Act, unless the Second and Third Readings of such Bill have been passed by the Legislative Assembly with the Concurrence of the Majority of the Members representing all those Electoral Divisions or Districts, and the Assent shall not be given to such Bill unless an Address has been presented by the Legislative Assembly to the Lieutenant-Governor stating that it has been so passed.*<sup>(35)</sup>

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<sup>(34)</sup> See, with respect to the Speaker of the Legislative Council, sections 9-14 of chapter 4 of the R.S.Q., 1941; 1946, c. 11.

<sup>(35)</sup> The Legislative Assembly of Quebec now consists of ninety-two members. See Section 19 of chapter 4 of the R.S.Q., 1941 as enacted by s. 1 of c. 12 of the Statutes of Quebec, 1945 and also s. 2 of ch. 42 of the Statutes of Quebec, 1953-54.

## 3. ONTARIO AND QUEBEC

**81.** Repealed.

**82.** The Lieutenant-Governor of Ontario and of Quebec shall from Time to Time, in the Queen's Name, by Instrument under the Great Seal of the Province, summon and call together the Legislative Assembly of the Province.

**83.** Until the Legislature of Ontario and Quebec otherwise provides, a Person accepting or holding in Ontario or in Quebec any Office, Commission, or Employment, permanent or temporary, at the Nomination of the Lieutenant-Governor, to which an annual Salary, or any Fee, Allowance, Emolument, or profit of any Kind or Amount whatever from the Province is attached, shall not be eligible as a Member of the Legislative Assembly of the respective Province, nor shall he sit or vote as such; but nothing in this Section shall make ineligible any Person being a Member of the Executive Council of the respective Province, or holding any of the following Offices, that is to say, the Offices of Attorney-General, Secretary and Registrar of the Province, Treasurer of the Province, Commissioner of Crown Lands, and Commissioner of Agriculture and Public Works, and in Quebec Solicitor General, or shall disqualify him to sit or vote in the House for which he is elected, provided he is elected while holding such Office.<sup>(36)</sup>

**84.** Until the Legislatures of Ontario and Quebec respectively otherwise provide, all Laws which at the Union are in force in those Provinces respectively, relative to the following Matters, or any of them, namely,—the Qualifications and Disqualifications of Persons to be elected or to sit or vote as Members of the Assembly of Canada, the Qualifications or Disqualifications of Voters, the Oaths to be taken by Voters, the Returning Officers, their Powers and Duties, the Proceedings at Elections, the Periods during which such Elections may be continued, and the Trial of controverted Elections and the Proceedings incident thereto, the vacating of the Seats of Members and the issuing and Execution of new Writs in case of Seats vacated otherwise than by Dissolution,—shall respectively apply to Elec-

<sup>(36)</sup> The independence of the Legislative Assemblies is further guaranteed by Acts passed in the different provinces e.g.: ch. 202 of the Rev. Stat. Ont., 1950 (*The Legislative Assembly Act*) amended in 1952 by ch. 51; 1953, c. 56; 1954, c. 44; and ch. 4 of the Rev. Stat. Que., 1941 (*The Legislative Act*), amended 1944, c. 6; 1945, cc. 12, 14; 1946, c. 11; 1947, c. 20; 1948, c. 18; 1951-52, c. 18; 1952-53, cc. 37, 38; 1953-54, c. 42; 1954-55, c. 28.

tions of Members to serve in the respective Legislative Assemblies of Ontario and Quebec.<sup>(37)</sup>

Provided that until the Legislature of Ontario otherwise provides, at any Election for a Member of the Legislative Assembly or Ontario for the District of Algoma, in addition to Persons qualified by the Law of the Province of Canada to vote, every male British Subject, aged Twenty-one Years or upwards, being a Householders, shall have a Vote.

**85.** Every Legislative Assembly of Ontario and every Legislative Assembly of Quebec shall continue for Four Years from the Day of the Return of the Writs for choosing the same (subject nevertheless to either the Legislative Assembly of Ontario or the Legislative Assembly of Quebec being sooner dissolved by the Lieutenant-Governor of the Province), and no longer.<sup>(38)</sup>

**86.** There shall be a session of the Legislature of Ontario and of that of Quebec once at least in every Year, so that Twelve Months shall not intervene between the last Sitting of the Legislature in each Province in one Session and its first Sitting in the next Session.

**87.** The following Provisions of this Act respecting the House of Commons of Canada shall extend and apply to the Legislative Assemblies of Ontario and Quebec, that is to say,—the Provisions relating to the Election of a Speaker originally and on Vacancies, the Duties of the Speaker, the absence of the

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(37) See respecting The Legislative Assembly and Elections in Ontario the following statutes: 1954, c. 84 (Representation); 1954, c. 93 (Voters' Lists); 1951, c. 21 (Elections); R.S.O., 1950, c. 67 (Controverted Elections); R.S.O., 1950, c. 202 (Legislative Assembly), as amended. On elections in Quebec see The Quebec Election Act, c. 5 of the R.S.A., 1941 as amended by 1942, c. 13 and 1945, c. 15; also the Quebec Controverted Elections Act, c. 6 of the R.S.Q., 1941 as amended by 1947, c. 22; 1950, c. 49; 1952-53, c. 31.

(38) "This limitation on the duration of the Legislature was carried in precise language into the Legislative Assembly Act of Ontario as it has been enacted and re-enacted from time to time until 1930, when, by c. 4, s. 2, the term was extended to five years and no longer. Then by 1942 (Ont.), c. 24 it was enacted that the then present Assembly shall continue until October 19, 1943, and that it shall not be necessary to hold any general election to choose members of the Assembly until such date without, however, affecting or abridging any prerogative of the Crown or the power of the Lieutenant-Governor to dissolve the Assembly sooner."

The King *ex rel.* Tolfree 1. Clark et al. (1943), 2 D.L.R., p. 558.

The Legislative Assembly Extension Act, 1943, (chapter 12 of the Statutes of Ontario, 1943) further extended the duration of the Legislative Assembly to the 19th day of October, 1944.

Advantage was not taken, however, of this statute and the Assembly was dissolved by the Lieutenant-Governor in July, 1943.

Speaker, the Quorum, and the Mode of voting, as if those Provisions were here re-enacted and made applicable in Terms to each such Legislative Assembly.

#### 4. NOVA SCOTIA AND NEW BRUNSWICK<sup>(39)</sup>

**88.** The Constitution of the Legislature of each of the Provinces of Nova Scotia and New Brunswick shall, subject to the Provisions of this Act, continue as it exists at the Union until altered under the Authority of this Act.<sup>(40)</sup>

**89.** Repealed.

#### 6. THE FOUR PROVINCES

**90.** The following Provisions of this Act respecting the Parliament of Canada, namely,—the Provisions relating to Appropriation and Tax Bills, the Recommendation of Money Votes, the Assent to Bills, the Disallowance of Acts, and the Signification of Pleasure on Bills reserved,—shall extend and apply to the Legislatures of the several Provinces as if those Provisions were here re-enacted and made applicable in terms to the respective Provinces and the Legislatures thereof, with the Substitution of the Lieutenant-Governor of the Province for the Governor General, of the Governor General for the Queen and for a Secretary of State, of One Year for Two Years, and of the Province of Canada.

#### VI. DISTRIBUTION OF LEGISLATIVE POWERS<sup>(41)</sup>

##### *Powers of the Parliament*

**91.** It shall be lawful for the Queen, by and with the Advice and Consent of the Senate and House of Commons, to make

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(39) "The provinces of Nova Scotia and New Brunswick, unlike the provinces of Canada, were, from the beginning, English colonies by settlement, with constitutions like that of England itself, granted under Royal Prerogative." W. F. O'Connor, *op. cit.* Annex I p. 6.

(40) The last lines of section 88 were repealed by the Statute Law Revision Act, 1893 (56 Victoria, chapter 14) of the Statutes of the United Kingdom of Great Britain and Ireland. The lines repealed were as follows:—

"and the House of Assembly of New Brunswick existed at the passage of this Act shall unless sooner dissolved, continued for the Period for which it was elected."

(41) The constitutional decisions of the Judicial Committee have been collected and reprinted in three volumes. The first two volumes entitled "The Canadian Constitution and the Judicial Committee" were edited by Dr. E. R. Cameron. The first volume covered the period 1867 to 1915, and the second, the period 1916 to 1929. The period from 1930 to 1939 is covered in a volume edited and annotated by C. P. Plaxton, K.C. and entitled "Canadian Constitutional Decisions of the Privy Council, 1930 to 1939." A work in 3 volumes (Decisions of the Judicial Committee, etc.) by Mr. R. A. Olmsted, Q.C., covers the period from 1867 to 1954.

Laws for the Peace, Order, and good Government of Canada, in relation to all Matters not coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces; and for greater Certainty, but not so as to restrict the Generality of the foregoing Terms in this Section, it is hereby declared that (notwithstanding anything in this Act) the exclusive Legislative Authority of the Parliament of Canada extends to all Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The amendment from time to time of the Constitution of Canada, except as regards matters coming within the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces, or as regards rights or privileges by this or any other Constitutional Act granted or secured to the Legislature of the Government of a province, or to any class of persons with respect to schools or as regards the use of the English or the French language or as regards the requirements that there shall be a session of the Parliament of Canada at least one each year, and that no House of Commons shall continue for more than five years from the day of the return of the Writs for choosing the House; provided, however, that a House of Commons may in time of real or apprehended war, invasion or insurrection be continued by the Parliament of Canada if such continuation is not opposed by the votes of more than one-third of the members of such House.<sup>(42)</sup>
- 1A. The Public Debt and Property.
2. The Regulation of Trade and Commerce.
- 2A. Unemployment Insurance.<sup>(42)</sup>
3. The raising of Money by any Mode or System of Taxation.
4. The borrowing of Money on the Public Credit.
5. Postal Service.
6. The Census and Statistics.
7. Militia, Military and Naval Service, and Defence.

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<sup>(42)</sup> Section 91 was amended by inserting item 2A in 1940. This amendment was made by the British North America Act of 1940 (3 and 4 Geo. VI, ch. 36, section 1). Then it was further amended by re-numbering class 1 thereof as class 1A and by inserting before that class class 1 above by the British North America Act (No. 2), of 1949 (13 George VI, ch. 81.)

8. The fixing of and providing for the Salaries and Allowances of Civil and other Offices of the Government of Canada.
9. Beacons, Buoys, Lighthouses, and Sable Island.
10. Navigation and Shipping.
11. Quarantine and the Establishment and Maintenance of Marine Hospitals.
12. Sea Coast and Inland Fisheries.
13. Ferries between a Province and any British or Foreign Country or between Two Provinces.
14. Currency and Coinage.
15. Banking, Incorporation of Banks, and the Issue of Paper Money.
16. Savings Banks.
17. Weights and Measures.
18. Bills of Exchange and Promissory Notes.
19. Interest.
20. Legal Tender.
21. Bankruptcy and Insolvency.
22. Patents of Invention and Discovery.
23. Copyrights.
24. Indians and Lands reserved for the Indians.
25. Naturalization and Aliens.
26. Marriage and Divorce.
27. The Criminal Law, except the Constitution of Courts of Criminal Jurisdiction, but including the Procedure in Criminal Matters.
28. The Establishment, Maintenance, and Management of Penitentiaries.
29. Such Classes of Subjects as are expressly excepted in the Enumeration of the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

Any Matter coming within any of the Classes of Subjects enumerated in this Section shall not be deemed to come within the Class of Matters of a local or private Nature comprised in the Enumeration of the Classes of the Subjects by this Act assigned exclusively to the Legislatures of the Provinces.

**92.** In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subjects next hereinafter enumerated; that is to say,—

1. The Amendment from Time to Time, notwithstanding anything in this Act, of the Constitution of the Province, except as regards the Office of Lieutenant-Governor.

2. Direct Taxation within the Province in order to the Raising of a Revenue for Provincial Purposes.
3. The borrowing of Money on the sole Credit of the Province.
4. The Establishment and Tenure of Provincial Offices and the Appointment and Payment of Provincial Officers.
5. The Management and Sale of the Public Lands belonging to the Province and of the Timber and Wood thereon.
6. The Establishment, Maintenance, and Management of Public and Reformatory Prisons in and for the Province.
7. The Establishment, Maintenance, and Management of Hospitals, Asylums, Charities, and Eleemosynary Institutions in and for the Province, other than Marine Hospitals.
8. Municipal Institutions in the Province.
9. Shop, Saloon, Tavern, Auctioneer, and other Licences in order to the raising of a Revenue for Provincial, Local, or Municipal Purposes.
10. Local Works and Undertakings other than such as are of the following Classes:—
  - (a) Lines of Steam of other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Province, or extending beyond the Limits of the Province;
  - (b) Lines of Steam Ships between the Province and any British or Foreign Country;
  - (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces.
11. The Incorporation of Companies with Provincial Objects.
12. The Solemnization of Marriage in the Province.
13. Property and Civil Rights in the Province.
14. The Administration of Justice in the Province, including the Constitution, Maintenance, and Organization of Provincial Courts, both of Civil and of Criminal Jurisdiction, and including Procedure in Civil Matters in those Courts.
15. The Imposition of Punishment by Fine, Penalty, or Imprisonment for enforcing any Law of the Province made



in relation to any Matter coming within any of the Classes of Subjects enumerated in this Section.

16. Generally all Matters of a merely local or private Nature in the Province.

**93.** In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions:—

- (1) Nothing in any such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any Class of Persons have by Law in the Province at the Union;
- (2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the Separate Schools and School Trustee of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec;
- (3) Where in any Province a System of Separate or Dissentient Schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an Appeal shall lie to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education;
- (4) In case any such Provincial Law as from Time to Time seems to the Governor General in Council requisite for the due Execution of the Provisions of this Section is not made, or in case any Decision of the Governor General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as for only as the Circumstances of such Case, and as far only as the Circumstances of each Case require, the Parliament of Canada may make remedial Laws for the due Execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

*Uniformity of Laws in Ontario, Nova Scotia, and  
New Brunswick*

**94.** Notwithstanding anything in this Act, the Parliament of Canada may make Provision for the Uniformity of all or any of the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and of the Procedure of all or any of the Courts in those Three Provinces, and from and after the passing of any Act in that Behalf the Power of the Parliament of Canada to make Laws in relation to any Matter comprised in any such Act shall, notwithstanding anything in this Act, be unrestricted; but any Act of the Parliament of Canada making provision for such Uniformity shall not have effect in any Province unless and until it is adopted and enacted as Law by the Legislature thereof.

*Old Age Pensions<sup>(43)</sup>*

**94A.** It is hereby declared that the Parliament of Canada may from time to time make laws in relation to old age pensions in Canada, but no law made by the Parliament of Canada in relation to old age pensions shall affect the operation of any law present or future of a Provincial Legislature in relation to old age pensions.

*Agriculture and Immigration*

**95.** In each Province the Legislature may make Laws in relation to Agriculture in the Province, and to Immigration into the province; and it is hereby declared that the Parliament of Canada may from Time to Time make Laws in relation to Agriculture in all or any of the Provinces, and to Immigration into all or any of the Provinces; and any Law of the Legislature of a Province relative to Agriculture or to Immigration shall have effect in and for the Province as long and as far only as it is not repugnant to any Act of the Parliament of Canada.

*VII. Judicature*

**96.** The Governor General shall appoint the Judges of the Superior, District, and County Courts in each Province, except those of the Courts of Probate in Nova Scotia and New Brunswick.

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<sup>(43)</sup> Section 94A was added in 1951 by the British North America Act, 1951, 14-15 George VI, chapter 32, section 1.

**97.** Until the Laws relative to Property and Civil Rights in Ontario, Nova Scotia, and New Brunswick, and the Procedure of the Courts in those Provinces, are made uniform, the Judges of the Courts of those Provinces appointed by the Governor General shall be selected from the respective Bars of those Provinces.

**98.** The Judges of the Courts of Quebec shall be selected from the Bar of that Province.

**99.** The Judges of the Superior Courts shall hold office during good Behaviour, but shall be removable by the Governor-General on Address of the Senate and House of Commons.

**100.** The Salaries, Allowances, and Pensions of the Judges of the Superior, District, and County Courts (except the Courts of Probate in Nova Scotia and New Brunswick), and of the Admiralty Courts in Cases where the Judges thereof are for the Time being paid by Salary, shall be fixed and provided by the Parliament of Canada.

**101.** The Parliament of Canada may, notwithstanding anything in this Act, from Time to Time, provide for the Constitution, Maintenance, and Organization of a General Court of Appeal for Canada, and for the Establishment of any additional Courts for the better Administration of the Laws of Canada.

#### VIII. REVENUES; DEBTS; ASSETS; TAXATION

**102.** All Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick before and at the Union had and have Power of Appropriation, except such portions thereof as are by this Act reserved to the respective Legislatures of the Provinces, or are raised by them in accordance with the special Powers conferred on them by this Act, shall form One Consolidated Revenue Fund, to be appropriated for the Public Service of Canada in the Manner and subject to the Charges in this Act provided.

**103.** The Consolidated Revenue Fund of Canada shall be permanently charged with the Costs, Charges, and Expenses incident to the Collection, Management, and Receipt thereof, and the same shall form the first Charge thereon, subject to be reviewed and audited in such Manner as shall be ordered by the Governor General in Council until the Parliament otherwise provides.

**104.** The annual interest of the Public Debts of the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union shall form the Second Charge on the Consolidated Revenue Fund of Canada.

**105.** Unless altered by the Parliament of Canada, the salary of the Governor General shall be Ten thousand Pounds Sterling Money of the United Kingdom of Great Britain and Ireland, payable out of the Consolidated Revenue Fund of Canada, and the same shall form the Third Charge thereon.

**106.** Subject to the several Payments by this Act charged on the Consolidated Revenue Fund of Canada, the same shall be appropriated by the Parliament of Canada, for the Public Service.

**107.** All Stocks, Cash, Banker's Balances, and Securities for Money belonging to each Province at the time of the Union, except as in this Act mentioned, shall be the Property of Canada, and shall be taken in Reduction of the amount of the respective Debts of the Provinces at the Union.

**108.** The Public Works and Property of each Province, enumerated in the Third Schedule to this Act, shall be the Property of Canada.

**109.** All Lands, Mines, Minerals, and Royalties belonging to the several Provinces of Canada, Nova Scotia, and New Brunswick at the Union, and all Sums then due and payable for such Lands, Mines, Minerals, or Royalties, shall belong to the several Provinces of Ontario, Quebec, Nova Scotia, and New Brunswick in which the same are situate or arise, subject to any Trusts existing in respect thereof, and to any Interest other than that of the Province in the same.

**110.** All Assets connected with such Portions of the Public Debt of each Province as are assumed by that Province shall belong to that Province.

**111.** Canada shall be liable for the Debts and Liabilities of each Province existing at the Union.

**112.** Ontario and Quebec conjointly shall be liable to Canada for the amount (if any) by which the Debt of the Province of Canada exceeds at the Union Sixty-two million five hundred thousand dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon.

**113.** The Assets enumerated in the Fourth Schedule to this Act belonging at the Union to the Province of Canada shall be the property of Ontario and Quebec conjointly.

**114.** Nova Scotia shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Eight million Dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon.

**115.** New Brunswick shall be liable to Canada for the Amount (if any) by which its Public Debt exceeds at the Union Seven Million dollars, and shall be charged with Interest at the Rate of Five per Centum per Annum thereon.

**116.** In case the Public Debts of Nova Scotia and New Brunswick do not at the Union amount to Eight million and Seven million Dollars respectively they shall respectively receive by half-yearly Payments in advance from the Government of Canada Interest at Five per Centum per Annum on the Difference between the actual Amounts of their respective Debts and such stipulated Amounts.

**117.** The several Provinces shall retain all their respective Public Property not otherwise disposed of in this Act, subject to the Right of Canada to assume any Lands or Public Property required for Fortifications or for the Defence of the Country.

**118.** *The following Sums shall be paid yearly by Canada to the several Provinces for the Support of their Governments and Legislatures:*

	Dollars
Ontario .....	Eighty thousand
Quebec .....	Seventy thousand
Nova Scotia .....	Sixty thousand
New Brunswick .....	Fifty thousand

*Two hundred and sixty thousand;*

*and an annual Grant in aid to each Province shall be made, equal to Eighty Cents per Head of the Population as ascertained by the Census of One thousand eight hundred and sixty-one, and in the Case of Nova Scotia and New Brunswick, by each subsequent Decennial Census until the Population of each of those two Provinces amounts to Four hundred thousand Souls, at which Rate such Grant shall thereafter remain. Such Grants*

*shall be in full Settlement of all future Demands on Canada, and shall be paid half-yearly in advance to each Province; but the Government of Canada shall deduct from such Grants, as against any Province, all Sums chargeable as Interest on the Public Debt of that Province in excess of the several Amounts stipulated in this Act.*<sup>(44)</sup>

**119.** New Brunswick shall receive by half-yearly Payments in advance from Canada for the period of Ten years from the Union an additional Allowance of Sixty-three thousand Dollars per Annum; but as long as the Public Debt of that Province remains under Seven million Dollars, a Deduction equal to the interest at Five per Centum per Annum on such Deficiency shall be made from that Allowance of Sixty-three thousand Dollars.

**120.** All payments to be made under this Act, or in discharge of Liabilities created under any Act of the Provinces of Canada, Nova Scotia, and New Brunswick respectively, and assumed by Canada, shall, until the Parliament of Canada otherwise directs, be made in such Form and Manner as may from Time to Time be ordered by the Governor General in Council.

**121.** All articles of the Growth, Produce, or Manufacture of any one of the Provinces shall, from and after the Union, be admitted free into each of the other Provinces.

**122.** The Customs and Excise Laws of each Province shall, subject to the Provisions of this Act, continue in force until altered by the Parliament of Canada.

**123.** Where Customs Duties are, at the Union, leviable of any Goods, Wares, or Merchandise in any Two Provinces, those Goods, Wares, and Merchandises may, from and after the Union, be imported from one of those Provinces into the other of them on Proof of Payment of the Customs Duty leviable thereon in

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(44) Section 118 has been superseded by the British North America Act of 1907 (7 Edward VII, ch. 11, c. 1).

As to subsidies and allowances to the provinces *see the Provincial Subsidies Act*, chapter 192 of the Revised Statutes of Canada, 1927, and *The Maritime Provinces Additional Subsidies Act*, 1942 (chapter 14 of the Statutes of Canada, 1942-43).

Special compensation is also paid to the provinces which have agreed to vacate the personal income and corporation tax fields (for the duration of the war). *See The Dominion-Provincial Taxation Agreement Act*, 1942 (chapter 13 of the Statutes of Canada, 1942-43). *See also The Tax Rental Agreements Act*, 1952 (ch. 49) and *The Federal-Provincial Tax-Sharing Agreements Act* (1956, ch. 29).

the Province of Exportation, and on Payment of such further Amount (if any) of Customs Duty as is leviable thereon in the Province of Importation.

**124.** Nothing in this Act shall affect the Right of New Brunswick to levy the Lumber Dues provided in Chapter Fifteen of Title Three of the Revised Statutes of New Brunswick, or in any Act amending that Act before or after the Union, and not increasing the Amount of such Dues; but the Lumber of any of the Provinces other than New Brunswick shall not be subject to such Dues.

**125.** No Lands or Property belonging to Canada or any Province shall be liable to Taxation.

**126.** Such Portions of the Duties and Revenues over which the respective Legislatures of Canada, Nova Scotia, and New Brunswick had before the Union Power of Appropriation as are by this Act reserved to the respective Governments or Legislatures of the Provinces, and all Duties and Revenues raised by them in accordance with the special Powers conferred upon them by this Act, shall in each Province form One Consolidated Revenue Fund to be appropriated for the Public Service of the Province.

## IX. MISCELLANEOUS PROVISIONS

### *General*

**127.** Repealed.

**128.** Every Member of the Senate or Houses of Commons of Canada shall before taking his Seat therein take and subscribe before the Governor General or some Person authorized by him, and every Member of a Legislative Council or Legislative Assembly of any Province shall before taking his Seat therein take and subscribe before the Lieutenant Governor of the Province or some Person authorized by him, the Oath of Allegiance contained in the Fifth Schedule to this Act; and every Member of the Senate of Canada and every Member of the Legislative Council of Quebec shall also, before taking his Seat therein, take and subscribe before the Governor General, or some Person authorized by him, the Declaration of Qualification contained in the same Schedule.

**129.** Except as otherwise provided by this Act, all Laws in force in Canada, Nova Scotia, or New Brunswick at the

Union, and all Courts of Civil and Criminal Jurisdiction, and all legal Commissions, Powers, and Authorities, and all Officers, Judicial, Administrative, and Ministerial, existing therein at the Union, shall continue in Ontario, Quebec, Nova Scotia, and New Brunswick respectively, as if the Union had not been made; subject nevertheless (except with respect to such as are enacted by or exist under Acts of the Parliament of Great Britain or of the Parliament of the United Kingdom of Great Britain and Ireland), to be repealed, abolished, or altered by the Parliament of Canada, or by the Legislature of the respective Province, according to the Authority of the Parliament or of that Legislature under this Act.<sup>(45)</sup>

**130.** Until the Parliament of Canada otherwise provides, all Officers of the several Provinces having Duties to discharge in relation to Matters other than those coming within the Classes of Subjects by this Act assigned exclusively to the Legislatures of the Provinces shall be Officers of Canada, and shall continue to discharge the Duties of their respective Offices under the same Liabilities, Responsibilities, and Penalties as if the Union had not been made.

**131.** Until the Parliament of Canada otherwise provides, the Governor General in Council may from Time to Time appoint such Officers as the Governor General in Council deems necessary or proper for the effectual Execution of this Act.

**132.** The Parliament and Government of Canada shall have all Powers necessary or proper for performing the Obligations of Canada or of any Province thereof, as Part of the British Empire, towards Foreign Countries arising under Treaties between the Empire and such Foreign Countries.

**133.** Either the English or the French Language may be used by any Person in the Debates of the Houses of Parliament of Canada and of the Houses of the Legislature of Quebec; and both those Languages shall be used in the respective Records and Journals of those Houses; and either of those Languages may be used by any Person or in any Pleading or Process in or issuing from any Court of Canada established under this Act, and in or from all or any of the Courts of Quebec.

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<sup>(45)</sup> English law was introduced into the English speaking provinces as follows: In Nova Scotia by L/P in 1749, in P.E.I. in 1769 and in N.B. in 1784. The Upper Canada Statute of 1792 introduced English civil law in Ontario from that date. The French civil law was continued in Quebec by the Quebec Act, 1774.



The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both Languages.

*Ontario and Quebec*

**134.** Until the Legislature of Ontario or of Quebec otherwise provides, the Lieutenant-Governors of Ontario and Quebec may each appoint under the Great Seal of the Province the following Officers, to hold Office during Pleasure, that is to say,—the Attorney-General, the Secretary and Registrar of the Province, the Treasurer of the Province, the Commissioner of Crown Lands, and the Commissioner of Agriculture and Public Works, and in the Case of Quebec the Solicitor General, and may, by Order of the Lieutenant-Governor in Council, from Time to Time prescribe the Duties of those Officers and of the several Departments over which they shall preside or which they shall belong, and of the Officers and Clerks thereof; and may also appoint other and additional Officers to hold Office during Pleasure, and may from Time to Time prescribe the Duties of those Officers, and of the several Departments over which they shall preside or to which they shall belong, and of the Officers and Clerks thereof.<sup>(46)</sup>

**135.** Until the Legislature of Ontario or Quebec otherwise provides, all Rights, Powers, Duties, Functions, Responsibilities, or Authorities at the passing of this Act vested in or imposed on the Attorney-General, Solicitor General, Secretary and Registrar of the Province of Canada, Minister of Finance, Commissioner of Crown Lands, Commissioner of Public Works, and Minister of Agriculture and Receiver General, by any Law, Statute or Ordinance of Upper Canada, Lower Canada, or Canada, and not repugnant to this Act, shall be vested in or imposed on any Officer to be appointed by the Lieutenant-Governor for the Discharge of the same or any of them; and the Commissioner of Agriculture and Public Works shall perform the Duties and Functions of the Office of Minister of Agriculture at the passing of this Act imposed by the Law of the Province of Canada, as well as those of the Commissioner of Public Works.

**136.** Until altered by the Lieutenant-Governor in Council, the Great Seals of Ontario and Quebec respectively shall be the same, or of the same Design, as those used in the Provinces of

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<sup>(46)</sup> For Ontario, *see* R.S.O. 1950, c. 121.  
For Quebec, *see* R.S.Q. 1941, c. 7; 1942, c. 55; 1943, c. 39; 1944, c. 32; 1946, cc. 11, 22; 1949, c. 16; 1950, c. 16; 1952-53, cc. 16, 38, 39, 40.

Upper Canada and Lower Canada respectively before their Union as the Province of Canada.

**137.** The Words "and from thence to the End of the then next ensuing Session of the Legislature," or Words to the same Effect, used in any temporary Act of the Province of Canada not expired before the Union, shall be construed to extend and apply to the next Session of the Parliament of Canada if the subject matter of the Act is within the Powers of the same, as defined by this Act, or to the next Sessions of the Legislatures of Ontario and Quebec respectively if the Subject Matter of the Act is within the Powers of the same as defined by this Act.

**138.** From and after the Union the Use of the Words "Upper Canada" instead of "Ontario", or "Lower Canada" instead of "Quebec," in any Deed, Writ, Process, Pleading, Document, Matter, or Thing, shall not invalidate the same.

**139.** Any Proclamation under the Great Seal of the Province of Canada issued before the Union to take effect at a Time which is subsequent to the Union, whether relating to that Province, or to Upper Canada, or to Lower Canada, and the several Matters and Things therein proclaimed shall be and continue of like Force and Effect as if the Union had not been made.

**140.** Any Proclamation which is authorized by any Act of the Legislature of the Province of Canada to be issued under that Province, or to Upper Canada, or to Lower Canada, and which is not issued before the Union, may be issued by the Lieutenant-Governor of Ontario or of Quebec, as its Subject Matter requires, under the Great Seal thereof; and from and after the Issue of such Proclamation the same and the several Matters and Things therein proclaimed shall be and continue of the like Force and Effect in Ontario or Quebec as if the Union had not been made.

**141.** *The Penitentiary of the Province of Canada shall, until the Parliament of Canada otherwise provides, be and continue the Penitentiary of Ontario and of Quebec.*<sup>(47)</sup>

**142.** The Division and Adjustment of the Debts, Credits, Liabilities, Properties, and Assets of Upper Canada and Lower

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(47) For Penitentiaries in Canada, see the *Penitentiary Act*, ch. 206 of the Revised Statutes of Canada, 1952, as amended by s. 54 of ch. 53 of the statutes of 1952-53.

Canada shall be referred to the Arbitrament of Three Arbitrators, One chosen by the Government of Ontario, One by the Government of Quebec, and One by the Government of Canada; and the Selection of the Arbitrators shall not be made until the Parliament of Canada and the Legislators of Ontario and Quebec have met; and the Arbitrator chosen by the Government of Canada shall not be a Resident either in Ontario or in Quebec.

**143.** The Governor General in Council may from Time to Time order that such and so many of the Records, Books, and Documents of the Province of Canada as he thinks fit shall be appropriated and delivered either to Ontario or to Quebec, and the same shall thenceforth be the Property of that Province; and any Copy thereof or Extract therefrom, duly certified by the Officer having charge of the Original thereof, shall be submitted as Evidence.

**144.** The Lieutenant-Governor of Quebec may from Time to Time, by Proclamation under the Great Seal of the Province, to take effect from a day to be appointed therein, constitute Townships in those Parts of the Province of Quebec in which Townships are not then already constituted, and fix the Metes and Bounds thereof.

**145.** Repealed.

#### XI. ADMISSION OF OTHER COLONIES

**146.** It shall be lawful for the Queen, by and with the Advice of Her Majesty's Most Honourable Privy Council, on Addresses from the Houses of Parliament of Canada, and from the Houses of the respective Legislatures of the Colonies or Provinces of Newfoundland, Prince Edward Island, and British Columbia, to admit those Colonies or Provinces, or any of them, into the Union, and on Address from the Houses of the Parliament of Canada to admit Rupert's Land and the North western Territory, or either of them, into the Union, on such Terms and Conditions in each Case as are in the Addresses expressed and as the Queen thinks fit to approve, subject to the Provisions of this Act; and the Provisions of any Order in Council in that Behalf shall have effect as if they had been enacted by the Parliament of the United Kingdom of Great Britain and Ireland.<sup>(48)</sup>

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<sup>(48)</sup> The power to establish additional Provinces in the Dominion, to alter the limits of the Provinces (with their consent), to legislate for any territory not included in the Province, was conferred by The British

**147.** In the case of the Admission of Newfoundland and Prince Edward Island, or either of them, each shall be entitled to a Representation in the Senate of Canada of Four Members, and (notwithstanding anything in this Act) in case of the Admission of Newfoundland the normal Number of Senators shall be Seventy-six and their maximum Number shall be Eighty-two; but Prince Edward Island when admitted shall be deemed to be comprised in the third of the Three Divisions into which Canada is, in relation to the Constitution of the Senate, divided by this Act, and accordingly, after the Admission of Prince Edward Island, whether Newfoundland is admitted or not, the Representation of Nova Scotia and New Brunswick in the Senate shall, as Vacancies occur, be reduced from Twelve to Ten Members respectively, and the Representation of each of those Provinces shall not be increased at any Time beyond Ten, except under the Provisions of this Act for the Appointment of Three or Six additional Senators under the Direction of the Queen. <sup>(49)</sup>

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North America Act, 1871 (34-35 Vict., c. 28). This Act at the same time confirmed the Acts of Parliament of Canada 32-33 Vict., c. 3 and 33 Vict., c. 33 respecting Rupert's Land and the N.W. Territories, and the Province of Manitoba, respectively.

Rupert's Land and the North-West Territories became part of Canada pursuant to the Rupert's Land Act 1868 (Imp.) and the Order in Council of Her Majesty, Queen Victoria, dated 23rd June, 1870.

Manitoba was admitted as a province by the Manitoba Act assented to 12th May, 1870 (Dom.).

British Columbia was admitted as a province by Order in Council of Her Majesty, Queen Victoria, dated 16th May, 1871. See R.S.C. 1927, Vol. V, p. 4495.

Prince Edward Island was admitted as a province by Order in Council of Her Majesty, Queen Victoria, dated 26th June, 1873. See R.S.C. 1927, Vol. V, p. 4505.

Alberta was admitted as a province by "Alberta Act" (Dom.), IV and V Ed. 7, c. 3, assented to 20th July, 1905. See R.S.C. 1927, Vol. V, p. 4513.

Saskatchewan was admitted as a province by "The Saskatchewan Act" (Dom.), IV and V Ed. VII, c. 42, assented to 20th July, 1905. See R.S.C. 1927, Vol. V, p. 4531.

Newfoundland was admitted as a province by the British North America Act (No. 1), 1949. (12-13 George VI, ch. 22).

All parts of Canada not within the boundaries of the various provinces are in all things under the jurisdiction of the Parliament of Canada. See the *North-West Territories Act*, R.S.C. 1927, c. 142, Vol. III, p. 2871 and the *Yukon Act*, R.S.C. 1827, c. 215, Vol. IV, p. 4181. See also *The British North America Act*, 1871, c. 28, s. 2.

<sup>(49)</sup> The British North America Act of 1886 provided for the Representation in the Parliament of Canada of Territories which for the time being form part of the Dominion of Canada, but are not included in any province (49-50 Victoria, chapter 35).

This Act was given retroactive effect by section 2 thereof.

The British North America Act of 1915 made provision for representation of Newfoundland in the Senate in the advent of its admission into the Union (5-6 George V, chapter 45, subparagraph (vi) of subsection one of section one).

SCHEDULES<sup>(50)</sup>

These Schedules are omitted. See Note<sup>(50)</sup> below.

## SCHEDULES

## The FIRST SCHEDULE

*Electoral Districts of Ontario.*

(Omitted: See Note No. (49).)

## The SECOND SCHEDULE

*Electoral Districts of Quebec specially fixed.*

(Omitted: See Note No. (49).)

## The THIRD SCHEDULE

*Provincial Public Works and Property to be the Property of Canada.*

1. Canals, with Lands and Water Power connected therewith.
2. Public Harbours.
3. Lighthouses and Piers, and Sable Island.
4. Steamboats, Dredges, and Public Vessels.
5. Rivers and Lake Improvements.
6. Railways and Railway Stocks, Mortgages, and other Debts due by Railway Companies.
7. Military Roads
8. Custom Houses, Post Offices, and all other Public Buildings, except such as the Government of Canada appropriate for the Use of the Provincial Legislatures and Governments.
9. Property transferred by the Imperial Government, and known as Ordnance Property.

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<sup>(50)</sup> The first and second schedules to the British North America Act, which gave the electoral divisions for the provinces of Ontario and Quebec respectively, have been altered by subsequent legislation of Canada and those provinces. For representation in the House of Commons, see chapter 334 of the Revised Statutes of Canada, 1952. For representation in the Legislative Assembly of Ontario, see chapter 84 of the Statutes of Ontario, 1954, and for representation in the Legislative Assembly of Quebec see chapter three of the Revised Statutes of the Province of Quebec, 1941, as amended by 1942, c. 16; 1943, c. 7; 1944, cc. 6, 7, 8; 1945, cc. 12, 13; 1946, c. 10; 1949, cc. 14, 15; 1950, cc. 47, 48 and 126; 1950-51, cc. 52 and 53; 1953-54, cc. 35 and 42; 1954-55, cc. 25, 26 and 27.

10. Armouries, Drill Sheds, Military Clothing, and Munitions of War, and Lands set apart for general Public Purposes.

### The FOURTH SCHEDULE

*Assets to be the Property of Ontario and Quebec conjointly.*

Upper Canada Building Fund.

Lunatic Asylums.

Normal School.

Court Houses

in

Aylmer,

Montreal,

Kamouraska,

} Lower Canada.

Law Society, Upper Canada.

Montreal Turnpike Trust.

University Permanent Fund.

Royal Institution.

Consolidated Municipal Loan Fund, Upper Canada.

Consolidated Municipal Loan Fund, Lower Canada.

Agricultural Society, Upper Canada.

Lower Canada Legislative Grant.

Quebec Fire Loan.

Temisconata [Temiscouata?] Advance Account.

Quebec Turnpike Trust.

Education—East.

Building and Jury Fund, Lower Canada.

Municipalities Fund.

Lower Canada Superior Education Income Fund.

### The FIFTH SCHEDULE

#### OATH OF ALLEGIANCE

I, A. B., do swear, That I will be faithful and bear true Allegiance to Her Majesty Queen Victoria.

*Note.—The Name of the King or Queen of Great Britain, Ireland and the British Dominions beyond the Seas, for the time being is to be substituted from Time to Time, with Proper Terms of Reference thereto.*

## DECLARATION OF QUALIFICATION

I, A. B., do declare and testify, That I am by Law duly qualified to be appointed a Member of the Senate of Canada (*or as the Case may be*), and that I am legally or equitably seised as of Freehold for my own Use and Benefit of the Lands or Tenements held in Free and Common Socage [*or seised or possessed* for my own Use and Benefit of Lands or Tenements held in Franc-alieu or in Roture (*as the Case may be*),] in the Province of Nova Scotia [*or as the Case may be*] of the Value of Four Thousand Dollars over and above all Rents, Dues, Debts, Mortgages, Charges, and Incumbrances due or payable out of or charged on or affecting the same and that I have not collusively or colourably obtained a Title to or become possessed of the said Lands and Tenements or any Part thereof for the Purposes of enabling me to become a Member of the Senate of Canada [*or as the Case may be*], and that my Real and Personal Property are together worth Four thousand Dollars over and above my Debts and Liabilities.

**THE STATUTE OF WESTMINSTER, 1931**  
**22 GEORGE V, CHAPTER 4 (U.K.)**

**An Act to give effect to certain resolutions passed by  
Imperial Conferences held in the years  
1926 and 1930<sup>(61)</sup>**

Annotated by Maurice Ollivier, Q.C., LL.D., F.R.S.C.,  
Parliamentary Counsel, House of Commons.

[11th December, 1931.]

WHEREAS the delegates to His Majesty's Governments in the United Kingdom, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland, at Imperial Conferences holden at Westminster in the years of our Lord nineteen hundred and twenty-six and nineteen hundred and thirty did concur in making the declaration and resolutions set forth in the Reports of the said Conferences:

And whereas it is meet and proper to set out by way of preamble to this Act that, inasmuch as the Crown is the symbol of the free association of the members of the British Commonwealth of Nations, and as they are united by a common allegiance to the Crown, it would be in accord with the established constitutional position<sup>(62)</sup> of all the members of the Commonwealth in relation to one another that any alteration in the law touching the Succession to the Throne<sup>(63)</sup> or the Royal Style

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(61) The Statute of Westminster was passed to confirm and ratify certain declarations made by the Delegates to the Imperial Conferences of 1926 and 1930. The Dominions represented at the Conferences were Canada, Australia, New Zealand, South Africa, the Irish Free State, Newfoundland and India, although the latter is not touched by the Statute.

(62) As to this constitutional position one may quote a passage in the report of the Inter-Imperial Relations Committee of the Imperial Conference of 1926 usually called "The Balfour Declaration":—

"They are autonomous communities within the British Empire, equal in status, in no way subordinate one to another in any aspect of their domestic or external affairs, though united by a common allegiance to the Crown, and freely associated as members of the British Commonwealth." Imperial Conference, 1926, Summary of Proceedings, page 12.

(63) Although the desiderata set out in the Preamble respecting the Succession to the Throne is not followed by any positive enactment in the enacting part of the Statute, pursuant to the recital in the Preamble and to the provision of section four of the Statute, after King Edward VIII had executed the instrument of abdication it was found necessary to declare the assent of the Parliament of Canada to the alteration in the law touching the Succession to the Throne and in



and Titles<sup>(64)</sup> shall hereafter require the assent as well of the Parliaments of all the Dominions as of the Parliament of the United Kingdom:

And whereas it is in accord with the established constitutional position that no law hereafter made by the Parliament of the United Kingdom shall extend to any of the said Dominions as part of the law of that Dominion otherwise than at the request and with the consent of that Dominion.<sup>(65)</sup>

And whereas it is necessary for the ratifying, confirming and establishing of certain of the said declarations and resolutions of the said Conferences that a law be made and enacted in due form by authority of the Parliament of the United Kingdom:

And whereas the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland have severally requested and consented to the submission of a measure to the Parliament of the United Kingdom for making such provision with regard to the matters aforesaid as is hereafter in this Act contained:<sup>(66)</sup>

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March, 1937 "An Act respecting alteration in the law touching the Succession to the Throne" (ch. 16) was passed for the purpose of consenting to the Act of the United Kingdom intituled "His Majesty's declaration of Abdication Act, 1936."

(64) The Royal style and titles were "George VI, by the Grace of God of Great Britain, Ireland, and the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India." (See the Royal and Parliamentary Titles Act, 1927, chapter 4 of the Statutes of the U.K., 1927). This was in accordance with the recommendation of the Imperial Conference, 1926, (Summary of Proceedings, page 13). See also 1947, c. 72 and for the actual title of the Queen see 1952-53, c. 9 of the Statutes of Canada.

(65) The second and third paragraphs of the Preamble are declaratory of constitutional conventions. The second is not even translated into an enactment. The third is translated into law by section four of the Statute, it accepts and confirms the following proposition in the Report of the Conference of 1926:—

"On the question raised with regard to the legislative competence of members of the British Commonwealth of Nations other than Great Britain, and in particular to the desirability of those members being enabled to legislate with extra-territorial effect, we think that it should similarly be placed on record that the constitutional practice is that legislation by the Parliament at Westminster applying to a Dominion would only be passed with the consent of the Dominion concerned." (Summary of Proceedings, page 15.)

(66) The House of Commons and the Senate of Canada on the 30th of June and 8th of July, 1931, respectively, adopted an address to His Majesty in order that there may be passed a statute of the Parliament of the United Kingdom to enact paragraphs 2 and 3 of the Preamble and sections 2, 3, 4, 5, 6, 7 and 11. (See the speech of the Rt. Hon. R. B. Bennett, Prime Minister of Canada, starting at page 3191 of the House of Commons Debates, 1931, in which he said that "the Statute of Westminster is the culmination of the long, long effort that has been

Now, therefore, be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

**1.** In this Act the expression "Dominion" means any of the following Dominions, that is to say, the Dominion of Canada, the Commonwealth of Australia, the Dominion of New Zealand, the Union of South Africa, the Irish Free State and Newfoundland.

**2.** (1) The Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of this Act by the Parliament of a Dominion.

(2) No law and no provision of any law made after the commencement of this Act by the Parliament of a Dominion shall be void or inoperative on the ground that it is repugnant to the law of England, or to the provisions of any existing or future Act of Parliament of the United Kingdom, or to any order, rule, or regulation made under any such Act, and the powers of the Parliament of a Dominion shall include the power to repeal or amend any such Act, order, rule, or regulation in so far as the same is part of the law of the Dominion. <sup>(67)</sup>

made since we were a colony, to become the self-governing dominion that we now are." In the said speech he made a short historical sketch of the various steps taken, more particularly reviewing what transpired at the conferences of 1926, 1929 and 1930. *See also* the speeches of Messrs. Lapointe, Ralston and Bourassa which follow.

<sup>(67)</sup> Pursuant to the declarations which had been made at the Conference of 1926, the conference of experts which met in 1929 recommended the repeal of this Act of 1865 which had passed in the first instance to extend the powers of colonial legislatures beyond the narrow limits assigned to them by judicial decisions. The Act of 1865 had declared that laws passed by a colony should not be invalid unless they were repugnant to some Act of Parliament which applied to the colony, and only to the extent of such repugnancy. (*See Nadan v. The King*, 1926 A.C., p. 482.)

To repeal the Act of 1865 was not sufficient, for there was a danger that the repeal might be held to restore the old common law doctrine; it was therefore considered necessary to indicate that the Acts adopted by a Dominion since 1865 could not become inoperative on account of being repugnant to the law of England.

The provinces (especially Ontario and Quebec) requested and obtained at the Interprovincial Conference which sat during April, 1931, that the benefits of section 2 be extended to them and this is the reason for the enactment of subsection (2) of section 7 of the Statute.

3. It is hereby declared and enacted that the Parliament of a Dominion has full power to make laws having extra-territorial operation.<sup>(68)</sup>

4. No Act of Parliament of the United Kingdom passed after the commencement of this Act shall extend or be deemed to extend, to a Dominion as part of the law of that Dominion, unless it is expressly declared in that Act that that Dominion has requested, and consented to, the enactment thereof.<sup>(69)</sup>

5. Without prejudice to the generality of the foregoing provisions of this Act, sections seven hundred and thirty-five and seven hundred and thirty-six of the Merchant Shipping Act, 1894, shall be construed as though reference therein to the Legis-

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<sup>(68)</sup> The right of extra-territoriality, which is one of the attributes of sovereignty, is the operation of laws upon the persons, the rights and the statutes existing outside of the limits of a state but continuing however to be subject to the laws of that state. It means for a nation the right to legislate for its own nationals outside of the limits of territorial waters, in such a way as to subject them to its own laws when they return to their country's jurisdiction.

Our limitations with respect to extra-territoriality previously extended notably to fisheries, taxes, navigation, aviation, marriage, criminal law, copyright, deportation and finally to the bringing into force of Acts on smuggling and illegal immigration.

Section 3 stipulates in an absolutely clear manner and without any restrictions that the Parliament of a Dominion has full power to make laws having extra-territorial operation.

This section does not apply to the legislatures of the provinces, thus avoiding the conflict of laws which might arise if each province had the power to enact laws having extra-territorial operation.

<sup>(69)</sup> The situation with respect to our right to legislate may be summarized as follows:—

In the beginning the United Kingdom would legislate for all its colonies without any form of consultation. The second period occurred when the colonies obtained the right to legislate subject to many restrictions, certain matters being reserved and remaining within the jurisdiction of the Parliament of the United Kingdom.

During a third period the Dominions were allowed to adopt for their own territory the British Statute, as in 1911 the Copyright Act and in 1914 the British Nationality Act.

A fourth period was that of consultation when the acts of interest to the whole Empire were to be adopted only after consultation of the different parties interested. For practical purposes, so far as uniformity of laws is required this period is still in existence, but the consultation has now become voluntary; for instance our Merchant Shipping Act has been enacted in conformity with the Convention respecting the British Commonwealth Merchant Shipping Agreement which has been signed in London on the 10th of December 1931.

The United Kingdom has itself limited its own power in legislating with respect to the Dominion by the adoption of section 4 of the Statute. As may be noticed from the perusal of this section, the British Acts referred to, are those which have been passed after the coming into force of the Statute of Westminster.

The Acts passed previously and which previously applied to the Dominions remain in force until our Parliament decides to repeal them. This section follows the recommendation of the Conference of 1930.

lature of a British possession did not include reference to the Parliament of a Dominion.<sup>(70)</sup>

6. Without prejudice to a generality of the foregoing provisions of this Act, section four of the Colonial Courts of Admiralty Act, 1890 (which requires certain laws to be reserved for the signification of His Majesty's pleasure or to contain a suspending clause), and so much of section seven of that Act as requires the approval of His Majesty in Council to any rules of Court for regulating the practice and procedure of a Colonial

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(70) Up to the time of the passing of the Statute of Westminster, Canada's legislative autonomy in matters relating to merchant shipping was circumscribed by the provisions of the Colonial Laws Validity Act, 1865, and also by sections 735 and 736 of the Merchant Shipping Act of 1894 (British) and from the fact that the Dominion could not give to its legislation extra-territorial effect.

The Merchant Shipping Act of 1854 applied to Great Britain and to its colonies, as there were then no Dominions. When the first Dominion was created in 1867, power was given to our federal Parliament to legislate as to navigation and merchant shipping. Our legislation, however, could be valid only in so far as it was not repugnant to that of the United Kingdom. A new British statute was passed in 1894 which was a consolidation of the Act of 1854 with the amendments made in the course of the past forty years.

Therefore the British Act of 1894 with the amendments made thereto up to 1911, also our own merchant shipping legislation have governed us up to the coming into force of our own statute passed in 1934. From 1911, it had been stipulated that the amendments made to the legislation of the United Kingdom would not apply to the Dominions.

We have mentioned previously that the Colonial Laws Validity Act was an obstacle to our autonomy in matters of shipping legislation and that another difficulty came from the fact that we could not pass laws having extra-territorial operation. The difficulties have ceased to exist from the operation of sections 2 and 3 of the Statute of Westminster already mentioned, which have cured those defects.

Section 2 states that the Colonial Laws Validity Act, 1865, shall not apply to any law made after the commencement of the Act by the Parliament of a Dominion, and section 3, that the Parliament of a Dominion has full power to make laws having extra-territorial operation. The non-application of the Colonial Laws Validity Act removed the main obstacle with respect to our right to legislate on merchant shipping.

However, it was not sufficient to state that the Colonial Laws Validity Act would not apply in the future nor to declare that the Dominion Parliament could make laws having extra-territorial operation but it was also necessary that sections 735 and 736 of the Imperial Merchant Shipping Act should cease to apply to the Dominions, and this was done by section 5 of the Statute of Westminster.

For that reason, the Dominion has exercised that right by passing a new Merchant Shipping Act in 1934.

By passing that Act, the Dominion has exercised the absolute right it has of legislating with respect to ships, wherever they made come from, when they happen to be in Canadian waters, it has exercised its right to legislate as to ships registered in Canada, whether they be in Canadian waters or elsewhere, subject in that case to local laws when the ships happen to be in non-Canadian waters or ports.

Court of Admiralty, shall cease to have effect in any Dominion as from the commencement of this Act.<sup>(71)</sup>

7. (1) Nothing in this Act shall be deemed to apply to the repeal, amendment or alteration of the British North America Acts, 1867 to 1930, or any order, rule or regulation made thereunder.<sup>(72)</sup>

(2) The provisions of section two of this Act shall extend to laws made by any of the Provinces of Canada and to the powers of the legislatures of such Provinces.<sup>(73)</sup>

(3) The powers conferred by this Act upon the Parliament of Canada or upon the legislatures of the Provinces shall be restricted to the enactment of laws in relation to matters within the competence of the Parliament of Canada or of any of the legislatures of the Provinces respectively.<sup>(74)</sup>

8. Nothing in this Act shall be deemed to confer any power to repeal or alter the Constitution or the Constitution

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(71) It is a moot question whether this section was necessary or not. The Colonial Courts of Admiralty Act of 1890 did govern, up to the passing of the Statute of Westminster, the constitution and, to a certain extent, the functioning of our courts of admiralty and had the effect of limiting jurisdiction. Section 4 prevented the Dominion legislatures from extending their jurisdiction or affecting their procedure without the approval of the Secretary of State.

The jurisdiction of our court of admiralty was limited to that of the High Court of Admiralty in England; on the other hand since 1890 important additions were made to the admiralty jurisdiction of the High Court which were made to our own, that is to the jurisdiction of the Exchequer Court as a court of admiralty (chapter 29 of our statutes of 1891 had made the Exchequer Court a court of admiralty under the Colonial Courts of Admiralty Act).

The restrictions imposed upon us have now disappeared by virtue of section 6 of the statute. It will not be necessary any more that our enactments before coming into force be approved by the Sovereign Council, and as we have seen in the note to section 2, the Dominion Parliament was given power to repeal Acts of the United Kingdom "in so far as the same is part of the law of the Dominion," which of course includes the power to repeal, as far as we are concerned, the Colonial Courts of Admiralty Act, 1890.

(72) The British North America Acts, 1867 to 1930 referred to (to be found in this volume, *ante*) are the following:—

The British North America Act, 1867 (being the main Act).

The British North America Act, 1871 (Establishment of Provinces).

The British North America Act, 1886 (Representation of Territories).

The British North America Act, 1915 (Alteration of constitution of Senate).

The British North America Act, 1930 (Natural Resources).

(73) See Note (67) appended to section 1 of the Statute.

(74) The areas of legislative competence of Canada and the provinces as delimited by sections 91 and 92 respectively are not altered so that no power is given here to Canada to invade provincial rights or to the provinces to affect the powers of the federal Parliament.

As to the distribution of legislative powers see the said sections 91 and 92 of the British North America Act, 1867, with notes appended thereto.

Act of the Commonwealth of Australia or the Constitution Act of the Dominion of New Zealand otherwise than in accordance with the law existing before the commencement of this Act.

**9.** (1) Nothing in this Act shall be deemed to authorize the Parliament of the Commonwealth of Australia to make laws on any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia.

(2) Nothing in this Act shall be deemed to require the concurrence of the Parliament or Government of the Commonwealth of Australia, in any law made by the Parliament of the United Kingdom with respect to any matter within the authority of the States of Australia, not being a matter within the authority of the Parliament or Government of the Commonwealth of Australia, in any case where it would have been in accordance with the constitutional practice existing before the commencement of this Act that the Parliament of the United Kingdom should make that law without such concurrence.

(3) In the application of this Act to the Commonwealth of Australia the request and consent referred to in section four shall mean the request and consent of the Parliament and Government of the Commonwealth.

**10.** (1) None of the following sections of this Act, that is to say, sections two, three, four, five and six, shall extend to a Dominion to which this section applies as part of the law of that Dominion unless that section is adopted by the Parliament of the Dominion, and any Act of that Parliament adopting any section of this Act may provide that the adoption shall have effect either from the commencement of this Act or from such later date as is specified in the adopting Act.

(2) The Parliament of any such Dominion as aforesaid may at any time revoke the adoption of any section referred to in subsection (1) of this section.

(3) The Dominions to which this section applies are the Commonwealth of Australia, the Dominion of New Zealand and Newfoundland.

**11.** Notwithstanding anything in the Interpretation Act, 1889, the expression "Colony" shall not, in any Act of the Parliament of the United Kingdom passed after the commencement of this Act, include a Dominion or any Province or State forming part of a Dominion.

**12.** This Act may be cited as the Statute of Westminster, 1931.<sup>(75)</sup>

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(75) This is not the first and only "Statute of Westminster". Under Edward the First we find 3 Edward 1, A.D. 1275 "*Les premiers Estatuts de Westminster*" (this title from Lib. Seac. Westm. X for xxj [xxv]), translated in English as "*The STATUTES OF WESTMINSTER; The First*". This code of 1275 dealt with freedom of election, Reasonableness of Amerciaments, Distress, Champerty and Extortion by the King's officers, Deceits by pleaders, Excessive tolls in market towns, etc.

The Statute of Westminster the Second is the name given to the Code of 1285 (13 Edward 1. A.D. 1285) "*Statuta Reg' Edwardi edita apud Westmon in Parleamento suo Pasch' anno Regni Suit'ciodecimo:—xliii°*".

The Statute of Westminster the Third (18 Edward 1, A.D. 1289-90) is referred to as the Statute "*Quia Emptores Terrarum*" and has to do with the Selling and Buying of Land. In the printed copies and translations it is intituled "*Statutum Westm. iij etc.*"

There is a fourth Statute of Westminster which contains the legislative sentence against the Despensers passed at Westminster in the summer of 1321. See Stubbs "*Constitutional History of England*," Volume II, pages 368-378 (4th edition).

## FINANCIAL ADMINISTRATION ACT

An Act to Provide for the Financial Administration of the Government of Canada, the Audit of the Public Accounts and the Financial Control of Crown Corporations.

### SHORT TITLE

**1.** This Act may be cited as the *Financial Administration Act*. 1951 (2nd Sess.), c. 12, s. 1.

### INTERPRETATION

**2.** In this Act

- (a) "appropriate Minister" means
- (i) with respect to a department mentioned in subparagraph (i) of paragraph (f), the Minister presiding over the department,
  - (ii) with respect to any other department, the Minister designated by the Governor in Council as the appropriate Minister,
  - (iii) with respect to the Senate and the House of Commons, the respective Speaker, and with respect to Library of Parliament, the Speakers of the Senate and the House of Commons, and
  - (iv) with respect to a corporation to which Part VIII applies, the Minister designated by the Governor in Council as the appropriate Minister;
- (b) "appropriation" means any authority of Parliament to pay money out of the Consolidated Revenue Fund;
- (c) "authorized agent" means any person authorized by the Minister to accept subscriptions for or make sales of securities;
- (d) "Comptroller" means the Comptroller of the Treasury appointed under this Act;
- (e) "Consolidated Revenue Fund" means the aggregate of all public moneys that are on deposit at the credit of the Receiver General;
- (f) "department" means
- (i) any of the departments named in Schedule A,
  - (ii) any other division or branch of the public service of Canada, including a commission appointed under the *Inquiries Act*, designated by the Governor in Council as a department for the purposes of this Act,
  - (iii) the staffs of the Senate, the House of Commons and the Library of Parliament, and
  - (iv) any corporation named in Schedule B;



- (g) "fiscal agent" means the Bank of Canada and a fiscal agent appointed under Part IV;
- (h) "fiscal year" means the period from the 1st day of April in one year to the 31st day of March in the next year;
- (i) "Minister" means the Minister of Finance and Receiver General;
- (j) "money" includes negotiable instruments;
- (k) "money paid to Canada for a special purpose" includes all money that is paid to a public officer under or pursuant to a statute, trust, treaty, undertaking, or contract, and is to be disbursed for a purpose specified in or pursuant to such statute, trust, treaty, undertaking or contract;
- (l) "negotiable instrument" includes any cheque, draft, traveller's cheque, bill of exchange, postal note, money order, postal remittance and any other similar instrument;
- (m) "public money" means all money belonging to Canada received or collected by the Receiver General or any other public officer in his official capacity or any person authorized to receive or collect such money, and includes
  - (i) duties and revenues of Canada,
  - (ii) money borrowed by Canada or received through the issue or sale of securities,
  - (iii) money received or collected for or on behalf of Canada, and
  - (iv) money paid to Canada for a special purpose;
- (n) "public officer" includes a Minister and any person employed in the public service of Canada;
- (o) "registrar" means the Bank of Canada and a registrar appointed under Part IV; and
- (p) "securities" means securities of Canada and includes bonds, notes, deposit certificates, non-interest bearing certificates, debentures, treasury bills, treasury notes and any other security representing part of the public debt of Canada. 1951 (2nd Sess.), c. 12, s. 2.

## PART I

## ORGANIZATION

*Treasury Board*

**3.** (1) There shall be a board called the Treasury Board, consisting of the Minister of Finance, who is the Chairman, and any five members of the Queen's Privy Council for Canada, who may be nominated from time to time by the Governor in Council.

(2) The Governor in Council may nominate such additional members of the Queen's Privy Council for Canada as he sees fit to be alternates to serve in the place of members of the Board.

(3) Subject to the terms of this Act and any directions of the Governor in Council, the Treasury Board may determine its own rules and methods of procedure. 1951 (2nd Sess.), c. 12, s. 3.

**4.** The Minister may designate an officer of the Department of Finance to be Secretary of the Treasury Board, and shall from among the persons employed in the Department of Finance provide the Board with such other employees as are necessary for the proper conduct of the business of the Board. 1951 (2nd Sess.), c. 12, s. 4.

**5.** (1) The Treasury Board shall act as a committee of the Queen's Privy Council for Canada on all matters relating to finance, revenues, estimates, expenditures and financial commitments, accounts, establishments, the terms and conditions of employment of persons in the public service, and general administrative policy in the public service, referred to the Board by the Governor in Council or on which the Board considers it desirable to report to the Governor in Council, or on which the Board considers it necessary to act under powers conferred by this or any other Act.

(2) The Governor in Council may authorize the Treasury Board to exercise all or any of the powers, other than powers of appointment, of the Governor in Council under the *Civil Service Act*, the *Civil Service Superannuation Act*, the *Defence Services Pension Act*, and Parts II to VI of the *Royal Canadian Mounted Police Act*.

(3) The Treasury Board may prescribe from time to time the manner and form in which the accounts of Canada and the

accounts of the several departments shall be kept, and may direct any person receiving, managing or disbursing public money to keep any books records or accounts that the Board considers necessary.

(4) The Treasury Board in the exercise of its powers under this or any other statute is subject to any direction given to it by the Governor in Council, and the Governor in Council may by order amend or revoke any action of the Board. 1951 (2nd Sess.), c. 12, s. 5.

**6.** The Treasury Board may require from any public officer or any agent of Her Majesty any account, return, statement, document, report or information that the Board considers necessary for the due performance of its duties. 1951 (2nd Sess.), c. 12, s. 6.

**7.** The Treasury Board may make regulations

- (a) respecting the collection, management and administration of, and the accounting for, public money;
- (b) respecting the keeping of records of property of Her Majesty;
- (c) subject to any other Act, prescribing rates of compensation, hours of work and other conditions of employment of persons in the public service;
- (d) notwithstanding the *Civil Service Act*,
  - (i) authorizing the payment to persons in the public service of compensation or other rewards for inventions or practical suggestions for improvements, and
  - (ii) governing payments to persons in the public service by way of reimbursement for travelling or other expenses and allowances to meet special expenses arising out of their duties; and
- (e) subject to any other Act, for any other purpose necessary for the efficient administration of the public service. 1951 (2nd Sess.), c. 12, s. 7.

#### *Department of Finance*

**8.** There shall be a department of the Government of Canada called the Department of Finance over which the Minister of Finance and Receiver General appointed by commission under the Great Seal of Canada shall preside. 1951 (2nd Sess.), c. 12, s. 8.

**9.** The Minister has the management and direction of the Department of Finance, the management of the Consolidated Revenue Fund and the supervision, control and direction of all matters relating to the financial affairs of Canada not by law assigned to any other Minister. 1951 (2nd Sess.), c. 12, s. 9.

**10.** (1) The Governor in Council may appoint an officer, called the Deputy Minister of Finance and Receiver General, to be the deputy head of the Department of Finance and to hold office during pleasure.

(2) Subject to section 11, such other officers and employees as are necessary for the proper conduct of the business of the Department shall be appointed in accordance with the provisions of the *Civil Service Act*. 1951 (2nd Sess.), c. 12, s. 10.

**11.** (1) The Governor in Council shall appoint as an officer of the Department of Finance an officer called the Comptroller of the Treasury.

(2) The salary of the Comptroller shall be fixed by the Governor in Council.

(3) The Comptroller shall be appointed to hold office during good behaviour, but he is removable by the Governor in Council for misbehaviour or for incapacity, inability of failure to perform his duties properly, or for other cause.

(4) Where the Comptroller is removed from office, the Order in Council providing for his removal and the documents relating thereto shall be laid before Parliament within fifteen days after it is made, or if Parliament is not then in session, within fifteen days after the commencement of the next session.

(5) The Governor in Council may appoint a person to act as Comptroller during the illness, incapacity or other absence of the Comptroller, or during a vacancy in the office of Comptroller. 1951 (2nd Sess.), c. 12, s. 11.

**12.** Notwithstanding any Act, the Comptroller is entitled to free access at all convenient times to all files, documents and other records relating to the accounts of every department, and he is also entitled to require and receive from members of the public service such information, reports and explanations as he may deem necessary for the proper performance of his duties. 1951 (2nd Sess.), c. 12, s. 12.

**13.** The Comptroller may station in any department any person employed in his office to enable him more effectively to

carry out his duties, and the department shall provide the necessary office accommodation for any person so stationed. 1951 (2nd Sess.), c. 12, s. 13.

**14.** (1) The Comptroller shall require every person employed in his office who is to examine the accounts of a department pursuant to this Act to comply with any security requirements applicable to, and to take any oath of secrecy required to be taken by persons employed in that department.

(2) The Comptroller may suspend from the performance of his duties any person employed in his office. 1951 (2nd Sess.), c. 12, s. 14.

**15.** On the request of the Minister and with the approval of the Minister of Finance, the Comptroller may

- (a) provide accounting and other services in connection with the collection and accounting of public money for a department, and
- (b) examine the collecting and accounting practices applied in a department, and report thereon to the appropriate Minister. 1951 (2nd Sess.), c. 12, s. 15.

## PART II

### PUBLIC MONEY

**16.** (1) Subject to this Part, all public money shall be deposited to the credit of the Receiver General.

(2) The Minister shall establish, in the name of the Receiver General, accounts with such banks and fiscal agents as he designates for the deposit of public money.

(3) Every person who collects or receives public money shall keep a record of receipts and deposits thereof in such form and manner as the Treasury Board may prescribe by regulation.

(4) Every person employed in the collection or management or charged with the receipt of public money and every other person who collects or receives public money shall pay all public money coming into his hands to the credit of the Receiver General through such officers, banks or persons and in such manner as the Minister directs. 1951 (2nd Sess.), c. 12, s. 16.

**17.** (1) The Minister may, when he deems it advisable for the sound and efficient management of public money or the public debt, purchase, acquire and hold securities and pay therefor out of the Consolidated Revenue Fund.

(2) The Minister may sell any securities purchased, acquired or held pursuant to subsection (1), and the proceeds of the sales shall be deposited to the credit of the Receiver General.

(3) Any net profit resulting in any fiscal year from the purchase, holding or sale of securities pursuant to this section shall be credited to the revenues of that fiscal year, and any net loss resulting in any fiscal year from such purchase, holding or sale shall be charged to an appropriation provided by Parliament for the purpose.

(4) For the purposes of subsection (3), the net profit or loss in any fiscal year shall be determined by taking into account realized profits and losses on securities sold, the amortization applicable to the fiscal year of premiums and discounts on securities, and interest applicable to the fiscal year. 1951 (2nd Sess.), c. 12, s. 17.

**18.** Where a service is provided by Her Majesty to any person and the Governor in Council is of opinion that the whole or part of the cost of the service should be borne by the person to whom it is provided, the Governor in Council may, subject to the provisions of any Act relating to that service, by regulation prescribe the fee that may be charged for the service. 1951 (2nd Sess.), c. 12, s. 18.

**19.** (1) Where money is received by a public officer from any person as a deposit to ensure the doing of any act or thing, the public officer shall hold or dispose of the money in accordance with regulations of the Treasury Board.

(2) Where money is paid by any person to a public officer for any purpose that is not fulfilled, the money may, in accordance with regulations of the Treasury Board, be returned or repaid to that person, less such sum as in the opinion of the Board is properly attributable to any service rendered.

(3) Money paid to the credit of the Receiver General and not being public money may be returned or repaid in accordance with regulations of the Treasury Board. 1951 (2nd Sess.), c. 12, s. 19.

**20.** (1) Money received by or on behalf of Her Majesty for a special purpose and paid into the Consolidated Revenue Fund may be paid out of the Consolidated Revenue Fund for that purpose, subject to the provisions of any statute applicable thereto.

(2) Subject to any other Act, interest may be allowed and paid from the Consolidated Revenue Fund in respect of money to which subsection (1) applies, in accordance with and at rates fixed by the Minister with the approval of the Governor in Council. 1951 (2nd Sess.), c. 12, s. 20.

**21.** Where the Senate or House of Commons, by resolution or pursuant to any rule or standing order authorizes a refund of public money that was received in respect of any proceedings before Parliament, the Minister may pay the refund out of the Consolidated Revenue Fund. 1951 (2nd Sess.), c. 12, s. 21.

**22.** (1) The Governor in Council, on the recommendation of the Treasury Board, whenever he considers it in the public interest, may remit any tax, fee or penalty.

(2) A remission pursuant to this section may be total or partial, conditional or unconditional, and may be granted

(a) before, after or pending any suit or proceeding for the recovery of the tax, fee or penalty in respect of which it is granted,

(b) before or after any payment thereof has been made or enforced by process or execution, and

(c) in the case of a tax or fee, in any particular case or class of case and before the liability therefor arises.

(3) A remission pursuant to this section may be granted

(a) by forbearing to institute a suit or proceeding for the recovery of the tax, fee or penalty in respect of which the remission is granted,

(b) by delaying, staying or discontinuing any suit or proceeding already instituted,

(c) by forbearing to enforce, staying or abandoning any execution or process upon any judgment,

(d) by the entry of satisfaction upon any judgment, or

(e) by repaying any sum of money paid to or recovered by the Minister for the tax, fee or penalty.

(4) Where a remission is granted under this section subject to a condition, and the condition is not performed, it may be enforced, or all proceedings may be had as if there had been no remission.

(5) A conditional remission, upon performance of the condition, and an unconditional remission, have effect as if the remission was made after the tax, fee or penalty in respect of which it was granted had been sued for and recovered.

(6) No tax paid to Her Majesty on any goods shall be remitted by reason only that after the payment of the tax and after release from the control of customs or excise officers, the goods were lost or destroyed.

(7) Remissions granted under this or any other Act may be paid out of the Consolidated Revenue Fund.

(8) A statement of each remission of one thousand dollars or more granted under this section shall be reported to the House of Commons in the Public Accounts.

(9) Where a penalty imposed by any law relating to the revenue has been wholly and unconditionally remitted pursuant to this section, the remission has the effect of a pardon for the offence for which the penalty was incurred, and thereafter the offence has no legal effect prejudicial to the person to whom the remission was granted.

(10) In this section "tax" includes any tax, impost, duty or toll payable to Her Majesty, imposed or authorized to be imposed by any Act of Parliament, and "penalty" includes any forfeiture or pecuniary penalty imposed or authorized to be imposed by any Act of Parliament for any contravention of the laws relating to the collection of the revenue, or to the management of any public work producing toll or revenue, notwithstanding that part of such forfeiture or penalty is payable to the informer or prosecutor, or to any other person. 1951 (2nd Sess.), c. 12, s. 22.

**23.** (1) The Governor in Council, on the recommendation of the Treasury Board, may, if he considers it in the public interest, delete from the accounts, in whole or in part, any obligation or debt due to Her Majesty or any claim by Her Majesty,

(a) that does not exceed five hundred dollars and has been outstanding for five years or more, or

(b) that does not exceed one thousand dollars and has been outstanding for ten years or more.

(2) The obligations, debts and claims deleted from the Public Accounts under this section during any year shall be reported in the Public Accounts for that year. 1951 (2nd Sess.), c. 12, s. 23.

### PART III

#### PUBLIC DISBURSEMENTS

**24.** Subject to the *British North America Acts, 1867 to 1951*, no payments shall be made out of the Consolidated Reve-



nue Fund without the authority of Parliament. 1951 (2nd Sess.), c. 12, s. 24.

**25.** All estimates of expenditures submitted to Parliament shall be for the services coming in course of payment during the fiscal year. 1951 (2nd Sess.), c. 12, s. 25.

**26.** Where an appropriation is made for any purpose in any Act of Parliament for granting to Her Majesty any sum of money to defray expenses of the public service for a fiscal year, no payment shall be made pursuant to that appropriation out of the Consolidated Revenue Fund unless a warrant, prepared on the order of the Governor General in Council, has been signed by the Governor General authorizing expenditures to be charged against the appropriation, but no payments in excess of the amount of expenditures so authorized shall be made. 1951 (2nd Sess.), c. 12, s. 26.

**27.** Where a guarantee has been given under the authority of Parliament by or on behalf of Her Majesty for the payment of any debt or obligation, any amount required to be paid by the terms of the guarantee may, subject to the Act authorizing the guarantee, be paid out of the Consolidated Revenue Fund. 1951 (2nd Sess.), c. 12, s. 27.

**28.** (1) Where an accident happens to any public work or building when Parliament is not in session and an expenditure for the repair or renewal thereof is urgently required, or where any other matter arises when Parliament is not in session in respect of which an expenditure not foreseen or provided for by Parliament is urgently required for the public good, the Governor in Council, upon the report of the Minister that there is no appropriation for the expenditure, and the report of the appropriate Minister that the expenditure is urgently required, may order a special warrant to be prepared to be signed by the Governor General authorizing the payment of the amount estimated to be required for such expenditure.

(2) A special warrant issued pursuant to this section shall for the purposes of this Act be deemed to be an appropriation for the fiscal year in which the warrant is issued.

(3) Every warrant issued under this section shall be published in the *Canada Gazette* within thirty days after it is issued, and a statement showing all warrants issued under this section and the amounts thereof shall be laid by the Minister before

the House of Commons within fifteen days after the commencement of the next ensuing session of Parliament.

(4) For the purposes of this section Parliament shall be deemed to be not in session when it is under adjournment *sine die* or to a day more than two weeks after the day the accident happened or the other matter arose. 1951 (2nd Sess.), c. 12, s. 28.

**29.** At the commencement of each fiscal year or at such other times as the Treasury Board may direct, the deputy head or other officer charged with the administration of a service for which there is an appropriation by Parliament or an item included in estimates then before the House of Commons shall prepare and submit to the Treasury Board through the Comptroller a division of such appropriation or item into allotments in the form detailed in the estimates submitted to Parliament for such appropriation or item, or in such other form as the Board may prescribe, and when approved by the Board the allotments shall not be varied or amended without the approval of the Board, and the expenditures charged to the appropriation shall be limited to the amounts of such allotments. 1951 (2nd Sess.), c. 12, s. 29.

**30.** (1) No contract providing for the payment of any money by Her Majesty shall be entered into or have any force or effect unless the Comptroller certifies that there is a sufficient unencumbered balance available out of an appropriation or out of an item included in estimates before the House of Commons to discharge any commitments under such contract that would, under the provisions thereof, come in course of payment during the fiscal year in which the contract was entered into.

(2) Every contract involving the payment of money by Her Majesty shall be submitted to the Comptroller as soon as it is made or entered into, unless the Comptroller certifies that he does not require it.

(3) The Comptroller shall establish and maintain a record of all commitments chargeable to each appropriation.

(4) Where the Comptroller is satisfied that an agreement was entered into in order to defray an immediate expenditure that, through accident to public property or other emergency, was necessary to protect such property or to provide for such emergency, he may issue his certificate accordingly and there-

upon the agreement is exempt from the operation of subsection (1) from the time the agreement was entered into. 1951 (2nd Sess.), c. 12, s. 30.

**31.** (1) No charge shall be made against an appropriation except upon the requisition of the appropriate Minister of the department for which the appropriation was made, or by a person authorized by him in writing.

(2) Every requisition for a payment out of the Consolidated Revenue Fund shall be in such form, accompanied by such documents and certified in such manner as the Comptroller may require.

(3) The Comptroller shall reject a requisition if he is of the opinion that the payment

(a) would not be a lawful charge against the appropriation,

(b) would result in an expenditure in excess of the appropriation, or

(c) would reduce the balance available in the appropriation so that it would not be sufficient to meet the commitments charged against it.

(4) The Comptroller may transmit to the Treasury Board any requisition with respect to which he desires the direction of the Board, and the Board may order that payment be made or refused.

(5) Where the Comptroller

(a) declines to make a payment,

(b) disallows an item in an account, or

(c) refuses to give a certificate required by this Act,

the appropriate Minister of the department concerned may report the circumstances to the Treasury Board for its decision, and the Board may confirm or overrule the action of the Comptroller and give such directions as are necessary to carry out its decision.

(6) Whenever the Comptroller is of the opinion that a doubt exists as to the legality or otherwise of a proposed charge to an appropriation provided for the expenses of the Senate, the House of Commons or the Library of Parliament, he shall forthwith, through the Minister, draw the matter to the attention of the appropriate Minister who shall obtain a decision in accordance with such procedure as may from time to time be prescribed by the Senate or the House of Commons as the case may be or, in the case of the Library of Parliament, by the Senate and the House of Commons, and the Comptroller shall act in accordance with the decision.

(7) Where, in respect of any contract under which a cost audit is required to be made, the Comptroller reports that any costs or charges claimed by the contractor should not in the opinion of the Comptroller be allowed, such costs or charges shall not be allowed to the contractor unless the Treasury Board otherwise directs. 1951 (2nd Sess.), c. 12, s. 31.

**32.** No payment shall be made for the performance of work or the supply of goods, whether under contract or not, in connection with any part of the public service, unless, in addition to any other voucher or certificate that is required, the deputy of the appropriate Minister or other officer authorized by such Minister certifies

- (a) that the work has been performed or the material supplied or both, as the case may be, and that the price charged is according to contract, or if not specified by contract, is reasonable, or
- (b) where a payment is to be made before completion of the work or delivery of the goods, that the payment is in accordance with the contract. 1951 (2nd Sess.), c. 12, s. 32.

**33.**(1) Every payment pursuant to an appropriation, except a payment made under subsection (2), shall be made under the direction and control of the Comptroller by cheque drawn on the account of the Receiver General or other instrument, in such form and authenticated in such manner as the Treasury Board directs.

(2) Where an instrument issued under subsection (1) is presented by a bank to the Receiver General for payment, the Receiver General, or an officer authorized by him, may pay the instrument out of the Consolidated Revenue Fund. 1951 (2nd Sess.), c. 12, s. 33.

**34.** (1) Every cheque or other instrument issued under the direction of the Comptroller, when paid, shall be delivered into the custody of the Minister for examination and adjustment with the statements of cheques or other instruments issued.

(2) The Treasury Board on the recommendation of the Auditor General may make regulations governing the destruction from time to time of such cheques or other instruments. 1951 (2nd Sess.), c. 12, s. 34.

**35.** The balance of an appropriation granted for a fiscal year that remains unexpended at the end of the fiscal year shall

lapse, except that during the thirty days immediately following the end of the fiscal year a payment may be made under the appropriation for the purpose of discharging a debt payable

(a) during or prior to the fiscal year, or

(b) during the said thirty days for goods received or services rendered prior to the end of the fiscal year,

and such payment may be charged in the accounts for the fiscal year. 1951 (2nd Sess.), c. 12, s. 35.

**36.** (1) The Treasury Board may make regulations authorizing the making of accountable advances chargeable to the appropriation for the service in respect of which the advance is made.

(2) An advance for which an accounting has not been made at the termination of the fiscal year in which it was made shall be repaid or accounted for within thirty days thereafter or within such additional number of days, not exceeding thirty, as the Comptroller may fix in any particular case or class of case.

(3) The Comptroller may recover any accountable advance or any portion thereof that is not repaid or accounted for as required by subsection (2) out of any moneys payable by Her Majesty to the person to whom the advance was made.

(4) Every accountable advance that is not repaid or accounted for as required by this section shall be reported in the Public Accounts. 1951 (2nd Sess.), c. 12, s. 36.

**37.** An amount received as a refund or repayment of an expenditure or advance and deposited to the credit of the Receiver General shall be included in the unexpended balance of the appropriation against which it was charged. 1951 (2nd Sess.), c. 12, s. 37.

**38.** It is a term of every contract providing for the payment of any money by Her Majesty that payment thereunder is subject to there being an appropriation for the particular service for the fiscal year in which any commitment thereunder would come in course of payment. 1951 (2nd Sess.), c. 12, s. 38.

**39.** The Governor in Council may make regulations with respect to the conditions under which contracts may be entered into and, notwithstanding any other Act,

(a) may direct that no contract by the terms of which payments are required in excess of such amount or amounts

as the Governor in Council may prescribe shall be entered into or have any force or effect unless entry into the contract has been approved by the Governor in Council or the Treasury Board, and

- (b) may make regulations with respect to the security to be given to and in the name of Her Majesty to secure the due performance of contracts. 1951 (2nd Sess.), c. 12, s. 39.

**40.** Where a payment under a contract is withheld to ensure the due performance of the contract, the payment may, subject to this Act, be charged to the appropriation for that contract, and the amount so charged may be credited to a special account in the Consolidated Revenue Fund, to be paid out in accordance with the contract under regulations of the Treasury Board. 1951 (2nd Sess.), c. 12, s. 40.

## PART IV

### PUBLIC DEBT

**41.** No money shall be borrowed or security issued by or on behalf of Her Majesty without the authority of Parliament. 1951 (2nd Sess.), c. 12, s. 41.

**42.** Where authority is conferred by Parliament to borrow money on behalf of Her Majesty, the Governor in Council, subject to the Act authorizing the borrowing, may authorize the Minister

- (a) to borrow the money by the issue and sale of securities in such form, for such separate sums, at such rate of interest and upon such other terms and conditions as the Governor in Council may approve, and
- (b) to enter into such contracts or agreements relating to the borrowing of the money or the issue or sale of securities relating thereto on such terms and conditions as the Governor in Council may approve. 1951 (2nd Sess.), c. 12, s. 42.

**43.** The Governor in Council may authorize the Minister to borrow such sums of money as are required for the payment of any securities that were issued under the authority of Parliament, other than section 44, and are maturing or have been called for redemption. 1951 (2nd Sess.), c. 12, s. 43.

**44.** Where it appears to the Governor in Council that the Consolidated Revenue Fund will be insufficient to meet the disbursements lawfully authorized to be made from it, the Governor in Council may authorize the Minister to borrow, at such rate of interest and on such terms and conditions as the Governor in Council may approve, for a period not exceeding six months, an amount not exceeding such amount as he deems necessary to ensure that the Consolidated Revenue Fund will be sufficient to meet those disbursements. 1951 (2nd Sess.), c. 12, s. 44.

**45.** An annual statement of all borrowing transactions on behalf of Her Majesty shall be included in the Public Accounts. 1951 (2nd Sess.), c. 12, s. 45.

**46.** (1) Securities issued under the authority of this Part shall be signed by the Deputy Minister of Finance or an officer of the Department of Finance designated by the Governor in Council to sign on behalf of the Deputy Minister of Finance, and shall be countersigned by such officer of the Department of Finance or other person as the Governor in Council designates for that purpose.

(2) The Minister may direct that there be substituted for signatures in the proper handwriting of one or both of the persons authorized to sign or countersign securities under this section, facsimiles thereof printed from engraving.

(3) Where both the signature and countersignature on a security issued under this section are to be printed, they shall be printed, together with a distinguishing mark, from engraving, on the securities after they have been delivered to the Minister, a registrar or a fiscal agent and while the securities are in the custody and control of the Minister, registrar or fiscal agent. 1951 (2nd Sess.), c. 12, s. 46.

**47.** The Governor in Council may

- (a) appoint one or more registrars to perform such services in respect of the registration of loans as the Governor in Council may prescribe,
- (b) appoint one or more fiscal agents to perform such services in respect of loans as the Governor in Council may prescribe, and
- (c) fix the remuneration or compensation of any registrar or fiscal agent appointed under this section. 1951 (2nd Sess.), c. 12, s. 47.

**48.** (1) The Minister shall cause to be maintained a system of books and records

- (a) showing all money authorized by Parliament to be borrowed by the issue and sale of securities,
- (b) containing a description and record of all money so borrowed and securities issued, and
- (c) showing all amounts paid in respect of the principal of or interest on all money so borrowed.

(2) Every fiscal agent and registrar shall annually and as often as required by the Minister give to the Minister an accounting, in such form and terms and containing such information as the Minister prescribes, of all his transactions as fiscal agent or registrar. 1951 (2nd Sess.), c. 12, s. 48.

**49.** The Governor in Council may provide for the creation and management of a sinking fund with respect to any issue of securities or with respect to all securities issued. 1951 (2nd Sess.), c. 12, s. 49.

**50.** The payment of all money borrowed and interest thereon and of the principal of and interest on all securities issued by or on behalf of Her Majesty with the authority of Parliament is a charge and payable out of the Consolidated Revenue Fund. 1951 (2nd Sess.), c. 12, s. 50.

**51.** All money required under section 49 to provide a sinking fund or other means of securing repayment of securities the remuneration and compensation of registrars and fiscal agents appointed under section 47 and all costs, expenses and charges incurred in the negotiation or raising of loans or in the issue, redemption, servicing, payment and management of any loan and any securities issued in respect thereof, may, with the authority of the Governor in Council, be paid out of the Consolidated Revenue Fund. 1951 (2nd Sess.), c. 12, s. 51.

**52.** Where it is provided by a prospectus or other official notice issued by or under the authority of the Minister that a subscriber may purchase securities

- (a) by payments to an authorized agent, or
- (b) by deductions from the remuneration of the subscriber by his employer,

the amount of any such payment or deduction that has not been accounted for by the delivery of securities to the subscriber or repaid to the subscriber shall be deemed to be money re-



ceived in trust for Her Majesty by the agent or employer for which he is accountable to Her Majesty under section 89, and for the purpose of the *Bankruptcy Act* and the *Winding-up Act*, where the money paid or deducted cannot be identified among the assets of the employer or agent, a portion of the said assets equal in value to the amount of the payment or deduction shall be deemed to be segregated and held in trust for Her Majesty. 1951 (2nd Sess.), c. 12, s. 52.

**53.** There shall be established in the Consolidated Revenue Fund an account to be known as the Investors' Indemnity Account to which shall be credited the sum of twenty-five thousand dollars, such further amounts as are appropriated by Parliament for the purposes of this section and any recoveries of the losses referred to in section 54. (1951) (2nd Sess.), c. 12, s. 53.

**54.** The Minister may, in accordance with and subject to the regulations, pay out of the Investors' Indemnity Account any losses sustained by subscribers for securities who have paid all or part of the purchase price of such securities but have not received the security or repayment of the amount so paid, and losses sustained by any person in the redemption of securities. 1951 (2nd Sess.), c. 12, s. 54.

**55.** Her Majesty and a fiscal agent or registrar acting as such are not bound to see to the execution of any express or implied trust to which any securities are subject. 1951 (2nd Sess.), c. 12, s. 55.

**56.** The Governor in Council may make such regulations as he deems necessary to provide for the management of the public debt of Canada and the payment of interest thereon, and, without limiting the generality of the foregoing, may make regulations

- (a) for the inscription or registration of securities and prescribing the effect of such inscription or registration,
- (b) for the transfer, transmission, exchange, redemption, cancellation and destruction of any securities, and, without limiting the generality of the foregoing,
  - (i) for the transmission, transfer or redemption of securities pursuant to judgment or as a result of the death, dissolution or bankruptcy of the registered owner thereof, and

- (ii) prescribing the conditions upon which the transfer, transmission, exchange and redemption of securities registered in the names of infants, minors or other persons not of full capacity to enter into ordinary contracts, may be made,
- (c) for the issue of securities or making of payments in respect of damaged, lost, stolen or destroyed securities or interest coupons, and of the cheques pertaining thereto and prescribing conditions to such issue or payment,
- (d) requiring guarantees to be given to the registrar in such manner and by such persons as the regulations may prescribe, before the registrar is authorized to make any entry in the register,
- (e) authorizing the correction by the registrar, in such circumstances as may be prescribed by the regulations, of errors in the register and otherwise authorizing rectification of the register, and
- (f) providing for the payment of losses out of the Investors' Indemnity Account. 1951 (2nd Sess.), c. 12, s. 56.

## PART V.

### PUBLIC STORES.

**57.** Every department shall maintain adequate records of stores and the appropriate Minister or such other authority as the Governor in Council may direct may make rules and give directions governing the acquisition, receipt, custody, issue and control of such stores. 1951 (2nd Sess.), c. 12, s. 57.

**58.** (1) Subject to this section, where Parliament has authorized a department to operate a revolving fund for the purpose of acquiring and managing stores or for manufacturing, producing, processing or dealing in stores or materials, and has fixed the amount that may be charged to that revolving fund at any time,

- (a) payments may be made out of the Consolidated Revenue Fund for these purposes subject to such terms and conditions as the Treasury Board may prescribe, and
- (b) the Comptroller shall keep an account to which shall be charged
  - (i) the cost of such of the stores and materials on hand in the department at the time the revolving fund is established as the Treasury Board may prescribe, and

- (ii) the payments made under paragraph (a).
- (2) There shall be shown as credits in the account
  - (a) all money received by the Receiver General in respect of operations of the revolving fund, and
  - (b) amounts charged to appropriations as the reimbursement of costs charged to the revolving fund of stores or material issued or work performed in respect of services for which the appropriations were made.
- (3) A payment made out of the Consolidated Revenue Fund pursuant to subsection (1) together with the balance of the revolving fund shall not be greater than the amount fixed by Parliament as the amount that may be charged to the revolving fund at any time or such lesser amount as the Treasury Board may prescribe.
- (4) For the purposes of this section "balance of the revolving fund" means the aggregate of all payments charged to the revolving fund, less all credits to the revolving fund.
- (5) At the end of each fiscal year the value of the inventory held and accounts receivable in respect of the operations of a revolving fund shall be determined in accordance with regulations of the Treasury Board, and if such value added to the receipts shown in the revolving fund, exceeds the total of expenditures shown in the revolving fund then due and payable, the excess shall be transferred from the revolving fund as revenue, but if the value is less no amount may be credited to the revolving fund to meet the deficiency except with the authority of Parliament. 1951 (2nd Sess.), c. 12, s. 58.

**59.** All accounting transactions with respect to a revolving fund under this Part shall be recorded at cost, but for the purpose of valuing stores or materials on hand at the time the revolving fund is established and of valuing inventories and issues of stores and materials, cost may be determined in accordance with such recognized accounting practices as the appropriate Minister with the approval of the Treasury Board, may direct. 1951 (2nd Sess.), c. 12, s. 59.

**60.** (1) The appropriate Minister may from time to time, but not less frequently than once in every five years, constitute a board of survey to enquire into the state of the stores under the management of a department.

(2) Where a board of survey constituted under subsection (1) recommends the deletion from inventory of any obsolete or unserviceable stores or materials or any stores or materials

lost or destroyed, the appropriate Minister with the approval of the Treasury Board, may direct the deletion of all or any part of such stores or materials from the inventory, but the value of stores or materials so deleted shall not be credited to a revolving fund except with the authority of Parliament.

(3) A statement in such form as the Treasury Board prescribes of all stores and materials deleted from inventories pursuant to subsection (2) shall be included annually in the Public Accounts. 1951 (2nd Sess.), c. 12, s. 60.

**61.** The Comptroller may examine records, accounts and procedures respecting stores and materials and report thereon to the Minister or the appropriate Minister. 1951 (2nd Sess.), c. 12, s. 61.

**62.** For the purposes of this Part, the Treasury Board may by regulation define for any department the expressions "stores", "materials" and "issues". 1951 (2nd Sess.), c. 12, s. 62.

## PART VI.

### PUBLIC ACCOUNTS.

**63.** (1) The Minister shall cause accounts to be kept in such a manner as to show,

- (a) the expenditures made under and commitments chargeable against each appropriation,
- (b) the revenues of Canada, and
- (c) the other payments into and out of the Consolidated Revenue Fund.

(2) Subject to regulations of the Treasury Board, the Minister

- (a) shall cause accounts to be kept to show such of the assets and direct and contingent liabilities of Canada, and

- (b) may establish such reserves with respect to the assets and liabilities,

as in his opinion are required to give a true and fair view of the financial position of Canada.

(3) The accounts of Canada shall be kept in the currency of Canada. 1951 (2nd Sess.), c. 12, s. 63.

**64.** (1) An annual report, called the Public Accounts, shall be laid before the House of Commons by the Minister on or before the 31st day of December, or if Parliament is then not

in session, within fifteen days after the commencement of the next ensuing session.

(2) The Public Accounts shall be in such form as the Minister may direct, and shall include:

- (a) a report on the financial transactions of the fiscal year;
- (b) a statement, certified by the Auditor General, of the expenditures and revenues of Canada for the fiscal year;
- (c) a statement, certified by the Auditor General of such of the assets and liabilities of Canada as in the opinion of the Minister are required to show the financial position of Canada as at the termination of the fiscal year;
- (d) the contingent liabilities of Canada; and
- (e) such other accounts and information as are necessary to show, with respect to the fiscal year, the financial transactions and financial position of Canada, or are required by any Act to be shown in the Public Accounts. 1951 (2nd Sess.), c. 12, s. 64.

## PART VII.

### THE AUDITOR GENERAL.

**65.** (1) The Governor in Council shall by commission under the Great Seal of Canada appoint an officer called the Auditor General of Canada to hold office during good behaviour until he attains the age of sixty-five years, but he is removable by the Governor General on address of the Senate and House of Commons.

(2) The Auditor General shall out of the Consolidated Revenue Fund be paid a salary of fifteen thousand dollars per annum.\*

(3) The provisions of the *Civil Service Superannuation Act*, except those relating to tenure of office, apply to the Auditor General.

(4) Such officers and employees as are necessary to enable the Auditor General to perform his duties shall be appointed in accordance with the provisions of the *Civil Service Act*.

(5) The Governor in Council may appoint a person temporarily to perform the duties of the Auditor General during a vacancy in the office of Auditor General. 1951 (2nd Sess.), c. 12, s. 65.

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\* The salary was raised to twenty thousand dollars by an amending Act which came into force on the 1st day of July, 1954.

**66.** (1) Notwithstanding any Act, the Auditor General is entitled to free access at all convenient times to all files, documents and other records relating to the accounts of every department, and he is also entitled to require and receive from members of the public service such information, reports and explanations as he may deem necessary for the proper performance of his duties.

(2) The Auditor General may station in any department any person employed in his office to enable him more effectively to carry out his duties, and the department shall provide the necessary office accommodation for any such officer so stationed.

(3) The Auditor General shall require every person employed in his office who is to examine the accounts of a department pursuant to this Act to comply with any security requirements applicable to, and to take any oath of secrecy required to be taken by persons employed in that department.

(4) The Auditor General may suspend from the performance of his duty any person employed in his office. 1951 (2nd Sess.), c. 12, s. 66.

**67.** The Auditor General shall examine in such manner as he may deem necessary the accounts relating to the Consolidated Revenue Fund and to public property and shall ascertain whether in his opinion

- (a) the accounts have been faithfully and properly kept,
- (b) all public money has been fully accounted for, and the rules and procedures applied are sufficient to secure an effective check on the assessment, collection and proper allocation of the revenue,
- (c) money has been expended for the purposes for which it was appropriated by Parliament, and the expenditures have been made as authorized, and
- (d) essential records are maintained and the rules and procedures applied are sufficient to safeguard and control public property. 1951 (2nd Sess.), c. 12, s. 67.

**68.** The Auditor General shall

- (a) make such examination of the accounts and records of each registrar as he deems necessary, and such other examinations of a registrar's transactions as the Minister may require, and

(b) when and to the extent required by the Minister, participate in the destruction of any redeemed or cancelled securities or unissued reserves of securities, authorized to be destroyed under this Act,  
and may, by arrangement with the registrar, maintain custody and control, jointly with the registrar, of cancelled and unissued securities. 1951 (2nd Sess.), c. 12, s. 68.

**69.** The Auditor General shall examine and certify in accordance with the outcome of his examinations the several statements required by section 64 to be included in the Public Accounts, and any other statement that the Minister may present for audit certificate. 1951 (2nd Sess.), c. 12, s. 69.

**70.** (1) The Auditor General shall report annually to the House of Commons the results of his examinations and shall call attention to every case in which he has observed that

- (a) any officer or employee has wilfully or negligently omitted to collect or receive any money belonging to Canada,
  - (b) any public money was not duly accounted for and paid into the Consolidated Revenue Fund,
  - (c) any appropriation was exceeded or was applied to a purpose or in a manner not authorized by Parliament,
  - (d) an expenditure was not authorized or was not properly vouched or certified,
  - (e) there has been a deficiency or loss through the fraud, default or mistake of any person, or
  - (f) a special warrant authorized the payment of any money,
- and to any other case that the Auditor General considers should be brought to the notice of the House of Commons.

(2) The report of the Auditor General shall be laid before the House of Commons by the Minister on or before the 31st day of December, or, if Parliament is then not in session, within fifteen days after the commencement of the next ensuing session and if the Minister does not, within the time prescribed by this section, present the report to the House of Commons, the Auditor General shall transmit the report to the Speaker for tabling in the House of Commons. 1951 (2nd Sess.), c. 12, s. 70.

**71.** The Auditor General shall, whenever the Governor in Council, the Treasury Board or the Minister directs, inquire into and report on any matter relating to the financial affairs of Canada or to public property and on any person or organiza-

tion that has received financial aid from the Government of Canada or in respect of which financial aid from the Government of Canada is sought. 1951 (2nd Sess.), c. 12, s. 71.

**72.** Any report of the Auditor General to the Governor in Council or the Treasury Board shall be made through the Minister. 1951 (2nd Sess.), c. 12, s. 72.

**73.** Whenever it appears to the Auditor General that any public money has been improperly retained by any person, he shall forthwith report the circumstances of such cases to the Minister. 1951 (2nd Sess.), c. 12, s. 73.

**74.** The Auditor General may examine any person on oath on any matter pertaining to any account subject to audit by him and for the purposes of any such examination the Auditor General may exercise all the powers of a commissioner under Part I of the *Inquiries Act*. 1951 (2nd Sess.), c. 12, s. 74.

**75.** An officer of the public service nominated by the Treasury Board shall examine and certify to the House of Commons in accordance with the outcome of his examinations the receipts and disbursements of the office of the Auditor General. 1951 (2nd Sess.), c. 12, s. 75.

## PART VIII

### CROWN CORPORATIONS

**76.** (1) In this Part

- (a) "agency corporation" means a Crown corporation named in Schedule C;
- (b) "auditor" means, in relation to a corporation, the person authorized by Parliament to audit the accounts and financial transactions of the corporation;
- (c) "Crown corporation" means a corporation that is ultimately accountable, through a Minister, to Parliament for the conduct of its affairs, and includes the corporations named in Schedule B, Schedule C and Schedule D;
- (d) "departmental corporation" means a Crown corporation named in Schedule B; and
- (e) "proprietary corporation" means a Crown corporation named in Schedule D.

(2) The Governor in Council may by order delete the name of any corporation from Schedule B, Schedule C or Schedule D and shall thereupon add the name of that corporation to the appropriate schedule in accordance with subsection (3).



- (3) The Governor in Council may by order
- (a) add to Schedule B any Crown corporation that is a servant or agent of Her Majesty in right of Canada and is responsible for administrative, supervisory or regulatory services of a governmental nature;
- (b) add to Schedule C any Crown corporation that is an agent of Her Majesty in right of Canada and is responsible for the management of trading or service operations on a quasi-commercial basis, or for the management of procurement, construction or disposal activities on behalf of Her Majesty in right of Canada; and
- (c) add to Schedule D any Crown corporation that
  - (i) is responsible for the management of lending or financial operations, or for the management of commercial and industrial operations involving the production of or dealing in goods and the supplying of services to the public, and
  - (ii) is ordinarily required to conduct its operations without appropriations. 1951 (2nd Sess.), c. 12, s. 76.

**77.** (1) Where, in respect of a Crown corporation

- (a) no provision is made in any Act for the appointment of an auditor to audit the accounts and financial transactions of the corporation, or
- (b) the auditor is to be appointed pursuant to the *Companies Act*,

the Governor in Council shall designate a person to audit the accounts and financial transactions of the corporation.

(2) Notwithstanding any other Act, the Auditor General is eligible to be appointed the auditor, or a joint auditor, of a Crown corporation. 1951 (2nd Sess.), c. 12, s. 77.

**78.** (1) Sections 79 to 88, both inclusive, apply to agency corporations and proprietary corporations, but in the event of any inconsistency between the provisions thereof and the provisions of any other Act, the provisions of such other Act prevail.

(2) This Part does not apply to departmental corporations except as provided in section 76. 1951 (2nd Sess.), c. 12, s. 78.

**79.** The financial year of a corporation is the calendar year, unless the Governor in Council otherwise directs. 1951 (2nd Sess.), c. 12, s. 79.

**80.** (1) Each agency corporation shall annually submit to the appropriate Minister an operating budget for the next following financial year of the corporation for the approval of the appropriate Minister and the Minister of Finance.

(2) For each corporation the appropriate Minister shall annually lay before Parliament the capital budget for its financial year approved by the Governor in Council on the recommendation of the appropriate Minister and the Minister of Finance.

(3) The Treasury Board, on the joint recommendation of the Minister of Finance and the appropriate Minister, may by regulation prescribe the form in which budgets required by this section shall be prepared. 1951 (2nd Sess.), c. 12, s. 80.

**81.** (1) A corporation may, with the approval of the Minister of Finance, maintain in its own name one or more accounts in the Bank of Canada or in such bank in Canada or financial institution outside of Canada as the Minister of Finance may approve.

(2) The Minister of Finance may, with the concurrence of the appropriate Minister, direct a corporation to pay all or any part of the money of the corporation to the Receiver General to be placed to the credit of a special account in the Consolidated Revenue Fund in the name of the corporation, and the Minister of Finance may pay out, for the purposes of the corporation, or repay to the corporation, all or any part of the money in the special account.

(3) Notwithstanding the other provisions of this section, where the appropriate Minister and the Minister of Finance, with the approval of the Governor in Council, so direct, a corporation shall pay to the Receiver General so much of the money administered by it as the appropriate Minister and the Minister of Finance consider to be in excess of the amount required for the purposes of the corporation, and any money so paid may be applied towards the discharge of any obligation of the corporation to Her Majesty, or may be applied as revenues of Canada. 1951 (2nd Sess.), c. 12, s. 81.

**82.** (1) At the request of the appropriate Minister, and subject to the approval of the Governor in Council, the Minister of Finance may from time to time lend money to a corporation for working capital out of money in the Consolidated Revenue Fund.

(2) The aggregate amount of loans outstanding made to any one corporation under this section shall not at any time exceed five hundred thousand dollars.

(3) A loan under this section is subject to such terms and conditions as the Governor in Council approves and is repayable within a period not exceeding twelve months from the day on which the loan was made.

(4) A report of every loan to a corporation under this section shall be laid by the Minister of Finance before Parliament within fifteen days after it is made or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session. 1951 (2nd Sess.), c. 12, s. 82.

**83.** The Governor in Council may make regulations with respect to the conditions upon which an agency corporation may undertake contractual commitments. 1951 (2nd Sess.), c. 12, s. 83.

**84.** Subject to any order of the Governor in Council made on the joint recommendation of the Minister of Finance and the appropriate Minister, a corporation may make provision for reserves for depreciation of assets, for uncollectable accounts and for other purposes. 1951 (2nd Sess.), c. 12, s. 84.

**85.** (1) A corporation shall keep proper books of account and proper records in relation thereto.

(2) Subject to such directions as to form as the Minister of Finance and the appropriate Minister may jointly give, a corporation shall prepare in respect of each financial year statements of accounts which shall include

- (a) a balance sheet, a statement of income and expense and a statement of surplus, containing such information as, in the case of a company incorporated under the *Companies Act*, is required to be laid before the company by the directors at an annual meeting, and
- (b) such other information in respect of the financial affairs of the corporation as the appropriate Minister or the Minister of Finance may require.

(3) A corporation shall, as soon as possible, but within three months after the termination of each financial year submit an annual report to the appropriate Minister in such form as he may prescribe, which shall include the statement of accounts specified in subsection (2), and the appropriate Minister shall lay the report before Parliament within fifteen days after he

receives it or, if Parliament is not then in session, within fifteen days after the commencement of the next ensuing session.

(4) A corporation shall make to the appropriate Minister such reports of its financial affairs as he requires. 1951 (2nd Sess.), c. 12, s. 85.

**86.** The auditor is entitled to have access at all convenient times to all records, documents, books, accounts and vouchers of a corporation, and is entitled to require from the directors and officers of the corporation such information and explanations as he deems necessary. 1951 (2nd Sess.), c. 12, s. 86.

**87.** (1) The auditor shall report annually to the appropriate Minister the result of his examination of the accounts and financial statements of a corporation, and the report shall state whether in his opinion

(a) proper books of account have been kept by the corporation;

(b) the financial statements of the corporation

(i) were prepared on a basis consistent with that of the preceding year and are in agreement with the books of account,

(ii) in the case of the balance sheet, give a true and fair view of the state of the corporation's affairs as at the end of the financial year, and

(iii) in the case of the statement of income and expense, give a true and fair view of the income and expense of the corporation for the financial year; and

(c) the transactions of the corporation that have come under his notice have been within the powers of the corporation under this Act and any other Act applicable to the corporation;

and the auditor shall call attention to any other matter falling within the scope of his examination that in his opinion should be brought to the attention of Parliament.

(2) The auditor shall from time to time make to the corporation or to the appropriate Minister such other reports as he may deem necessary or as the appropriate Minister may require.

(3) The annual report of the auditor shall be included in the annual report of the corporation.

(4) Notwithstanding section 78, this section operates in lieu of section 124 of the *Companies Act*. 1951 (2nd Sess.), c. 12, s. 87.

**88.** In any case where the auditor is of the opinion that any matter in respect of a corporation should be brought to the attention of the Governor in Council, the Treasury Board or the Minister of Finance, such report shall be made forthwith through the appropriate Minister. 1951 (2nd Sess.), c. 12, s. 88.

## PART IX

### CIVIL LIABILITY AND OFFENCES

**89.** (1) Whenever the Minister has reason to believe that any person

- (a) has received money for Her Majesty and has not duly paid it over,
- (b) has received money for which he is accountable to Her Majesty and has not duly accounted for it, or
- (c) has in his hands any public money applicable to any purpose and has not duly applied it,

the Minister may cause a notice to be served on such person, or on his representative in case of his death, requiring him within such time from the service of the notice as may be named therein, duly to pay over, account for, or apply such money, as the case may be, and to transmit to the Minister proper vouchers that he has done so.

(2) Where a person has failed to comply with a notice served on him under subsection (1) within the time stated therein, the Minister shall state an account between such person and Her Majesty, showing the amount of the money not duly paid over, accounted for or applied, as the case may be, and, in the discretion of the Minister, charging interest on the whole or any part thereof at the rate of five per cent. per annum from such date as the Minister may determine, and in any proceedings for the recovery of such money a copy of the account stated by the Minister, certified by him, shall be *prima facie* evidence that the amount stated therein, together with interest, is due and payable to Her Majesty, without proof of the signature of the Minister or his official character, and without further proof thereof, and such amount and interest may be recovered as a debt due to Her Majesty. 1951 (2nd Sess.), c. 12, s. 89.

**90.** Where it appears

(a) by the books or accounts kept by or in the office of any person employed in the collection or management of the revenue,

(b) in any accounting by such person, or

(c) by his written acknowledgment or confession,

that such person has, by virtue of his office or employment, received money belonging to Her Majesty and has refused or neglected to pay over such money to the proper persons at the proper times, an affidavit deposing to such facts, taken by any person having knowledge thereof, shall, in any proceedings for recovery of such money, be received in evidence and shall be *prima facie* proof of the facts stated therein. 1951 (2nd Sess.), c. 12, s. 90.

**91.** Where by reason of any malfeasance, wilful neglect of duty or gross negligence by any person employed in collecting or receiving any public money, any sum of money is lost to Her Majesty, such person is accountable for such sum as if he had collected and received it and it may be recovered from him as if he had collected and received it. 1951 (2nd Sess.), c. 12, s. 91.

**92.** Every officer or person acting in any office or employment connected with the collection, management or disbursement of public money who

(a) receives any compensation or reward for the performance of any official duty, except as by law prescribed;

(b) conspires or colludes with any other person to defraud Her Majesty, or makes opportunity for any reason to defraud Her Majesty;

(c) designedly permits any violation of the law by any other person;

(d) wilfully makes or signs any false entry in any book, or wilfully makes or signs any false certificate or return in any case in which it is his duty to make an entry, certificate or return;

(e) having knowledge or information of the violation of any revenue law by any person, or of fraud committed by any person against Her Majesty, under any revenue law of Canada, fails to report, in writing, such knowledge or information to his superior officer; or

(f) demands or accepts or attempts to collect, directly or indirectly, as payment or gift or otherwise, any sum of money, or other thing of value, for the compromise, adjustment or settlement of any charge or complaint for any violation or alleged violation of law, is guilty of an indictable offence, and is liable on conviction to a fine not exceeding five hundred dollars, and to imprisonment for any term not exceeding five years. 1951 (2nd Sess.), c. 12, s. 92.

**93.** Every person who

(a) promises, offers or gives any bribe to any officer or any person acting in any office or employment connected with the collection, management or disbursement of public money, with intent

(i) to influence his decision or action on any question or matter that is then pending, or may, by law, be brought before him in his official capacity, or

(ii) to influence such officer or person to commit, or aid or abet in committing any fraud on the revenue, or to connive at, collude in, or allow or permit any opportunity for the commission of any such fraud, or

(b) accepts or receives any such bribe, is guilty of an indictable offence, and is liable on conviction to a fine not exceeding three times the amount so offered or accepted, and to imprisonment for any term not exceeding five years. 1951 (2nd Sess.), c. 12, s. 93.

**94.** All books, papers, accounts and documents kept or used by, or received or taken into the possession of any person who is or has been employed in the collection or management of the revenue or in accounting for the revenue, by virtue of that employment, shall be deemed to be chattels belonging to Her Majesty; and all money or valuable securities received or taken into the possession of any such officer or person by virtue of his employment shall be deemed to be money and valuable securities belonging to Her Majesty. 1951 (2nd Sess.), c. 12, s. 94.

## PART X

## MISCELLANEOUS

**95.** (1) Where, in the opinion of the Minister of Justice, any person is indebted to Her Majesty in right of Canada in any specific sum of money, the Treasury Board may authorize the Minister of Finance to retain by way of deduction or set-off the amount of any such indebtedness out of any sum of money that may be due or payable by Her Majesty in right of Canada to such person.

(2) Where, in the opinion of the Minister of Justice, any person is indebted in any specific sum of money on account of taxes payable to any province, and an agreement exists between Canada and the province whereby Canada is authorized to collect the tax on behalf of the province, the Treasury Board may authorize the Minister of Finance to retain by way of deduction or set-off, out of any sum of money that may be due or payable by Her Majesty in right of Canada to such person, the amount of such indebtedness, but the amount so retained shall not exceed the amount that might under the laws of the province be seized or attached under execution or garnishee proceedings.

(3) Where, in the opinion of the Minister,

(a) any person is indebted to a province in any specific sum of money by reason of his having received from the province a payment, in respect of which Canada has contributed under the provisions of any Act, to which he was not entitled, and

(b) the province has made reasonable efforts to effect recovery of the amount of such indebtedness,

the Treasury Board may authorize the Minister to retain by way of deduction or set-off the amount of such indebtedness out of any sum of money that may be due and payable by Her Majesty in right of Canada to such person, and the amount so deducted less the portion thereof that in the opinion of the Minister is proportionate to the contribution in respect thereof made by Canada, may be paid to the province out of the Consolidated Revenue Fund. 1951 (2nd Sess.), c. 12, s. 95.

**96.** Whenever it appears to the Governor in Council that any account, statement, return or document required by any Act of Parliament or otherwise to be laid before one or both Houses of Parliament contains the same information as or less



information than is contained in the Public Accounts, the Governor in Council may direct that the account, statement, return or other document be discontinued, and thereafter it need not be prepared or laid before either House of Parliament. 1951 (2nd Sess.), c. 12, s. 96.

**97.** Subject to any other Act of Parliament, no transfer, lease or loan of property owned by Her Majesty in right of Canada shall be made to any person, except in accordance with regulations or on the direction of the Governor in Council. 1951 (2nd Sess.), c. 12, s. 97.

**98.** (1) There shall be established in the Consolidated Revenue Fund a special account to be known as the Public Officers Guarantee Account to which shall be transferred or credited, in accordance with the regulations,

- (a) the balance of the Government Officers Guarantee Fund,
- (b) amounts paid by departments by way of premiums, and
- (c) amounts recovered by Her Majesty in respect of payments out of the said Account or the Government Officers Guarantee Fund,

and payment may be made out of the said Account, in accordance with the regulations, by way of indemnity for losses suffered by Her Majesty or others by reason of defalcations or other fraudulent acts or omissions of public officers.

(2) The Treasury Board may make regulations

- (a) prescribing the conditions upon which payments may be made out of the Public Officers Guarantee Account,
- (b) requiring departments to deposit amounts to the credit of the said Account, and
- (c) governing the operation of the said Account by the Minister.

(3) Every payment out of the Public Officers Guarantee Account and the amount of every loss suffered by Her Majesty by reason of defalcations or other fraudulent acts or omissions of a public officer, together with a statement of the circumstances, shall be reported annually in the Public Accounts. 1951 (2nd Sess.), c. 12, s. 98.

**99.** No bank shall make a charge for cashing a cheque or other instrument drawn on the Receiver General or on his account in the Bank of Canada or any other bank, or for cashing any other instrument issued as authority for the payment of money out of the Consolidated Revenue Fund, or in respect of

any cheque or other instrument drawn in favour of the Receiver General, the Government of Canada or any department thereof or any public officer in his capacity as such, and tendered for deposit to the credit of the Receiver General. 1951 (2nd Sess.), c. 12, s. 99.

**100.** The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect. 1951 (2nd Sess.), c. 12, s. 100.

#### SCHEDULE A

Department of Agriculture.  
Department of Citizenship and Immigration.  
Department of Defence Production.  
Department of External Affairs.  
Department of Finance.  
Department of Fisheries.  
Department of Insurance.  
Department of Justice.  
Department of Labour.  
Department of Mines and Technical Surveys.  
Department of National Defence.  
Department of National Health and Welfare.  
Department of National Revenue.  
Post Office Department.  
Department of Public Works.  
Department of Public Printing and Stationery.  
Department of Resources and Development.  
Department of the Secretary of State of Canada.  
Department of Trade and Commerce.  
Department of Transport.  
Department of Veterans Affairs.

1951 (2nd Sess.), c. 12, Sch. A.

#### SCHEDULE B

Agricultural Prices Support Board.  
Atomic Energy Control Board.  
Canadian Maritime Commission.  
Director of Soldier Settlement.  
The Director, The Veterans' Land Act.  
Dominion Coal Board.

Fisheries Prices Support Board.  
National Gallery of Canada.  
National Research Council.  
Unemployment Insurance Commission.

1951 (2nd Sess.), c. 12, Sch. B.

#### SCHEDULE C

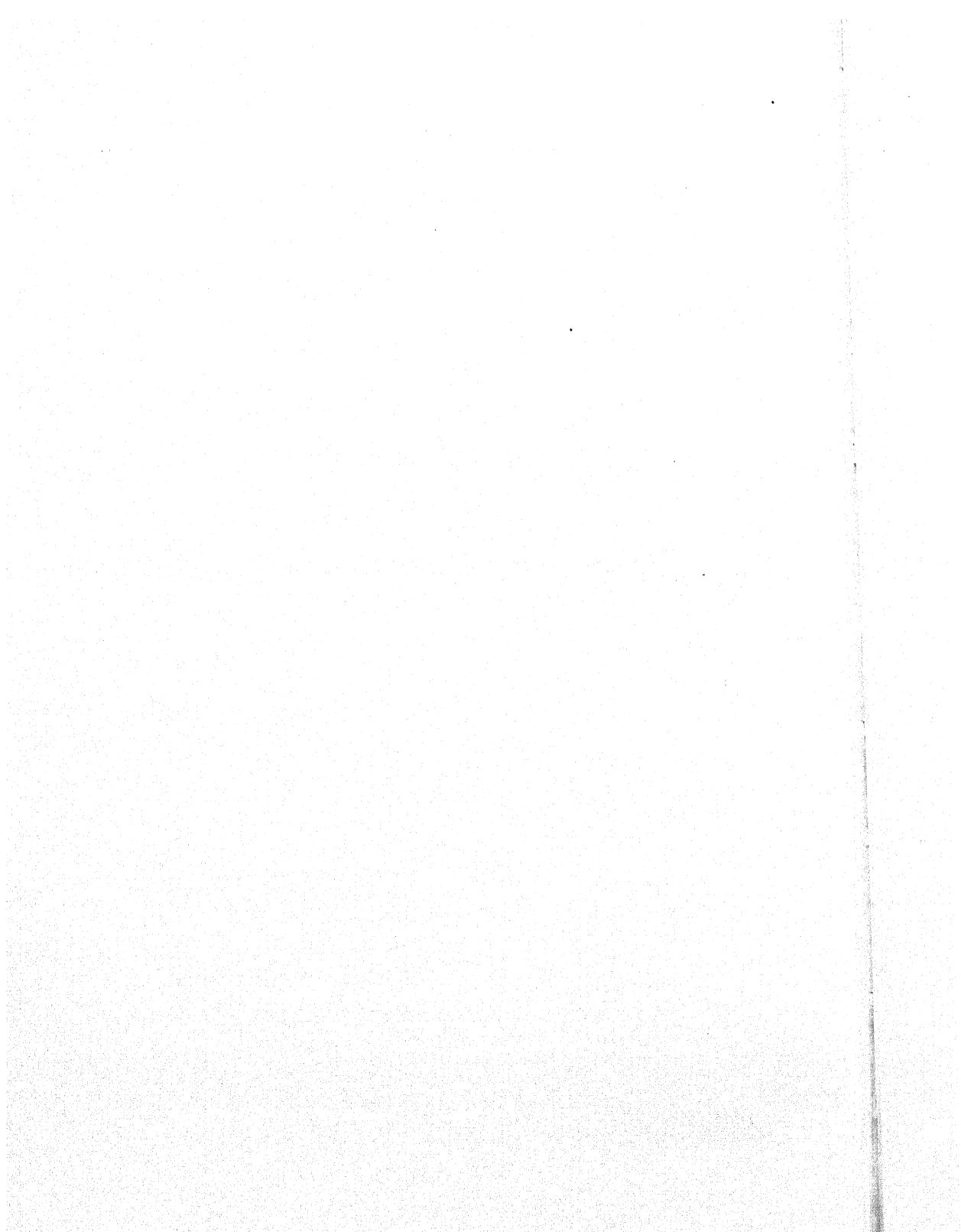
Canadian Arsenals Limited.  
Canadian Commercial Corporation.  
Canadian Patents and Development Limited.  
Canadian Sugar Stabilization Corporation Ltd.  
Commodity Prices Stabilization Corporation Ltd.  
Crown Assets Disposal Corporation.  
Defence Construction (1951) Limited.  
Federal District Commission.  
National Battlefields Commission.  
National Harbours Board.  
Park Steamship Company Limited.

1951 (2nd Sess.), c. 12, Sch. C.

#### SCHEDULE D

Canadian Broadcasting Corporation.  
Canadian Farm Loan Board.  
Canadian National (West Indies) Steamships, Limited.  
Canadian Overseas Telecommunication Corporation.  
Central Mortgage and Housing Corporation.  
Eldorado Mining and Refining (1944) Limited.  
Export Credits Insurance Corporation.  
National Railways as defined in the *Canadian National-  
Canadian Pacific Act*.  
Northern Transportation Company (1947) Limited.  
Northwest Territories Power Commission.  
Polymer Corporation Limited.  
Trans-Canada Air Lines.

1951 (2nd Sess.), c. 12, Sch. D.



# INDEX

The figures preceded by letter p. refer to pages; the others to the numbers of the citations.

## Absence

- of Chairman of Committees of the Whole.
- Deputy Speaker, S.O. 52, p. 187.
- Members, S.O. 5, p. 4.

## Accounts and Returns

- Acts of Parliament giving power to table, 209(1).
- Additional information required, 212.
- Address for, 207(3).
- Canada Gazette reports, 214.
- Command of the Crown, 209(4).
- Committee cannot command papers, 294(1), 305.
- Correction of irregular order, 211, 212.
- Custody of returns, 215.
- Defective return, 211, 212.
- Former sessions, orders for, 439.
- Governor General cannot withhold returns, 210.
- Motion marked with asterisk, S.O. 47, p. 161.
  - may be made by minister, 209(4).
- Printing of, S.O. 66, p. 234.
- Prompt publication of blue-books, 214.
- Refused on ground of public interest, 213.
- Register of papers tabled, 215.
- Standing order directs production, 209(5).

## Addresses

- For Accounts, Papers, etc.
  - B.N.A. Act Amendments, Form No. 89, p. 393.
  - Reply to Speech from The Throne, Form No. 2, p. 373;  
S.O. 38, p. 141; 169, 170.
- Amendments by way of additions 170(1).
  - are motions of "No Confidence", 170(2).
  - used with caution, 170(5).
- Nature of the debate, 169.

## Adjournment

- Of the House, always in order; S.O. 25, p. 73.
- Effect on business under consideration, S.O. 25, p. 73; S.O. 7, p. 4.
- House solely empowered to adjourn, 99.
- Intermediate proceeding, S.O. 25, p. 73; 99(2), 118, 120.

*Adjournment—Continued*

- Not allowed in Committee of the Whole, 230(2).
- " debatable, S.O. 32(2), p. 106.
- Quorum lacking, S.O. 3(2), p. 4.
- Select or Standing Committees, 301, 303(3).
- Six o'clock, Wednesdays and Fridays, S.O. 6(3), p. 4.
- Ten o'clock, Mondays, Tuesdays and Thursdays, S.O. 6(3), p. 4.
- Discussion of urgent matter, S.O. 26, p. 74.
- Anticipation rule, S.O. 26(6), p. 74; 100(10).
- Charge against Government, 100(8).
- Debate superseded, 100(11).
- cannot be adjourned, 100(12).
- During debate on Address, 100(5).
- Disallowed if other means available, 100(3) (4) (9).
- in Committee of the Whole, 230(2).
- Restrictions, 100(9).
- Rules of debate applicable, 100(10).
- Scope of motion, S.O. 26(6), pp. 74-75; 100(1).
- Speaker's decision not appealable, 100(7).
- intervention, 100(10).
- Upon motion to adjourn the House, 99(3).
- Urgency defined, 100(3) (7).

*Agents*

- Parliamentary, S.O. 117, 118, pp. 365-6; 521.
- Dismissal of, S.O. 118, p. 366.
- Fees, S.O. 117(1), p. 365.
- Liability of 117(1), p. 365.
- List of filed with Clerk, S.O. 117(2), p. 365.
- Observance of rules, S.O. 118, p. 366.
- Speaker's sanction, S.O. 117(1), p. 365.

*Aid and Supply*

- Appointment of Committee of Supply and W. & M., S.O. 55, p. 188; 241.
- Budget, S.O. 58(2), p. 191.
- Debate on money bills, 243.
- Duration of Committee of Supply, 271, 275.
- Ways and Means, 275.
- Estimates, 238.
- Function of Committee of Supply, 248.
- Ways and Means, 268.
- Money bill, definition of, 243, 277.
- Motion deferred, S.O. 61, p. 192.
- Private members debarred, 249, 251, 265, 270.

**Aid and Supply—*Continued***

- Procedure in committee, 242.
- Recommendation of the Crown, 243, 246, 278(3).
- Redress of grievances, 234.
- Resolution to go to committee, S.O. 61, p. 192.
- Senate's power, S.O. 63, 64, p. 193; 280, 281.
- Sole jurisdiction of Commons, S.O. 63, p. 193; 263.
- Supplementary estimates, 240.
- Third reading of money bills, 276(6).

**Amendments**

- Adding words, 201.
- Address in Reply, 207.
- Alternative proposed, 203(3).
- Anticipation rule, 203(11).
- Amendment to Amendment, 202.
- Approving part of question, 202(15).
- Direct negative, 202(12).
- Division on, 208.
- Earlier part of main motion, 203(17).
- Forms of, 201.
- Inconsistent, 203(1).
- Introduction of a Bill, 371.
- Leaving out words, 201.
- Member cannot amend own motion, 204(1).
- Minister amending own motion, 204(2).
- Motion for Committee of Supply, S.O. 56, pp. 189-90.
  - to proceed with Orders of the Day, 205(5).
  - refer contract, 202(5).
- Moved during debate, S.O. 44, p. 161.
- Negated, moved again, 203(9).
- Object of, 199.
- Only one and one subamendment allowed, S.O. 45, p. 161;  
202(1).
- Opposite conclusion of main motion, 202(13).
- Previous question, 217.
- Raising new issue, 202(3), 203(3).
- Relevancy to main motion, 203(1), (2), (3).
- To second reading of bills, 202(10).
- Six months' Hoist, 202(7).
- Same effect as main motion, 202(14).
- Speaker may refuse to put, 199.
- Striking out words, 205, 206, 402(3).
- Substituting words, 201, 206.
- United Kingdom procedure, 205.
- Withdrawal of, S.O. 49, p. 162; 202(8), (9), (10).

**Answers to Questions**

- Brief and only necessary explanations, 181(1).
- Debate not allowed, 181(3), 182.
- Legal opinions not to be sought, 183.
- Gratuitous references prohibited, 181(2).
- Minister may decline to answer, 181(3).
- Notice required, 181(5).
- Public policy, 181(4).
- Supplementary questions, 182.

**Anticipating Appointed Matter**

- In Amendments, 203(1).
- Discussion of urgent matters, S.O. 26(b) (d), p. 74.

**Appeals from Rulings**

- Appeal is to the House, S.O. 12, p. 5; 69.
- Debate not allowed, S.O. 12, p. 5.
- From Chairman's rulings, S.O. 59(4), p. 192.
- In Standing and Select Committees, 295.
- Speaker not to argue, 69(3).

**Appointment of House Staff**

- Civil Service Commission's authority, 447.
- Of the Clerk of the House, 443.
  - Clerk Assistant, 445.
  - Constables, Messengers, etc., S.O. 88(4), p. 322.
  - Law Clerk, S.O. 87, p. 322.
- Oath taken before the Clerk, 445.
- Preference for five sessions' service, 445.
- Sergeant at Arms' Appointment, S.O. 86, p. 321.
- Sessional writers, S.O. 86, p. 321.
- Suspensions and dismissals, 453.
- Vacancies filled after enquiry, S.O. 92, p. 323.

**Arrest**

- Members exempted from in civil matters, 103.
- Witnesses before committees exempt from, 309.

**Bills, hybrid**

- Public but affecting private rights, 376.
- Committee makes special report, 377.

**Bills, private**

- Affecting private rights, 513.
- All bills to be reported, S.O. 109, p. 357; 506.
- An exception to the law, 459.



**Bills, private—Continued**

- Amendments by the Senate, S.O. 114, p. 363.
- Bills and Petitions referred, S.O. 105, p. 351.
- Cases where public bills preferable, 460, 461, 506.
- Chairman signs bills and amendments, S.O. 111, p. 362.
- Change of title, 507.
- Clauses affecting public revenue, 499.
- Committee prevented to meet again, 492.
- Committees on private bills, S.O. 105 and 106, p. 354.
  - One week's notice compulsory, S.O. 109, p. 359.
  - Voting in, S.O. 107, p. 354.
  - Provisions not covered by notice, S.O. 108, p. 358.
  - Reporting bill compulsory, S.O. 109, p. 359.
- Confirming agreement, S.O. 104, p. 350.
- Definition of private bill, 462.
- Deposit of bills and fees, S.O. 94, p. 338, 519.
  - Fees refunded, 465, 466, 467.
  - Procedure followed, 467.
- Examination of petitions, S.O. 100, pp. 346-7.
- Extension of delays, 476(2).
- Further report presented, 477.
- Instruction sought from the House, 507.
  - to committee, S.O. 101, p. 347.
- Introduction of bill, S.O. 103, p. 348; 459.
- Judicial character of committee, 475, 490, 493.
  - Committee on open court, 501.
    - may alter preamble, 497, 498.
  - Counsel may appear, 458, 500, 501.
- Members of the House as witnesses, 505.
  - not on Committee, 502.
- Opponents state grounds in a petition, 489.
- Petitions for and against, 397, 456, 476, 479, 480, 481, 489, 490.
- Petitioners' *locus standi*, 481, 489, 496.
- Procedure in the committee, S.O. 106, p. 354, S.O. 107, p. 354;
  - 491, 492, 493, 494, 495, 496.
- Promoters as suitors, 475.
  - resisting opposition, 490.
- Witnesses heard, 496, 501.
- Maps or plans with petition, S.O. 98, p. 345.
  - bill, S.O. 99, p. 346.
- Ministers have no control over, 93(3).
  - not to initiate or promote, 464.
- Model bill, S.O. 97, pp. 344-5.
- Notice of amendments, S.O. 112, p. 362.
- Petitions for, S.O. 93, p. 335.
  - General rules apply, 457.

**Bills, private—Continued**

- Signatures, S.O. 70 (6), p. 255; 332, 473.
- When considered by S.O. Committee, 474.
- Preamble, S.O. 110, p. 361; 495, 496, 497, 516.
- Publication of notices, S.O. 96, p. 341; 468, 469, 470, 471.
- rules, S.O. 95, p. 341.
- Insufficient notice, 469, 470, 471.
- Notice dispensed with, 468.
- Too general, 471,
- Record in private bills office, S.O. 115, p. 364.
- Reference to committee compulsory, S.O. 105, p. 351.
- motion to refer merely procedural, 484.
- Referred back when materially altered, 512, 517.
- from committee to committee, 508.
- Report compulsory, S.O. 109, p. 359; 506.
- cannot be reconsidered, 516.
- Report of bill with amendments, 514, 515.
- Reprinting of bills, S.O. 113, p. 363; 518.
- Schedules, 398, 405 (2).
- Second reading, different from public bill, 483.
- Meaning of, 482.
- Once rejected cannot be offered again, 488.
- Principle of bill objectionable, 487.
- Printed in English and French, 380.
- Rule in United Kingdom House, 486.
- Standing Order Committee reports, S.O. 100, p. 472.
- Strict adherence to rules, 520.

**Bills, Public**

- Amending Act of same session, 373.
- Arrangement of provisions, 358.
- Conference with Senate, S.O. 22, p. 73.
- Consequential amendments, 282.
- Copy of Bill for Clerk of the House, 353.
- Custody of, 425.
- Distributed after first reading, 379.
- Enacting clause, 361 (3).
- First reading not debatable, S.O. 73, p. 263.
- Introduction, S.O. 71, p. 263.
- Amendment to motion for leave, 371.
- empowering Government to purchase silver, 368, 369.
- Establishing new civil staff, 366, 367.
- Explanation to be brief, 363.
- Imperfect bill, S.O. 72, p. 263.
- Involving charge on revenue, 367, 368, 369, 370.

**Bills, public—Continued**

- Leave to introduce, 363.
  - may be refused, 364, 365.
- Notice required, S.O. 41, p. 157.
- Pro forma bill on opening day, 33, 34.
- Right of initiating legislation, 362.
- Marginal notes, 359.
- Money bill, 243, 360(3).
- Postponement of clause, 400.
- Preamble, 360.
- Printing of, in English and French, S.O. 74, p. 263; 380.
- Proceedings in Committee of the Whole, S.O. 78, p. 264.
  - Amendments, generally, 406.
    - involving Treasury, S.O. 61, p. 192.
    - notice of, 403.
    - striking all words after "That", 402(3)..
    - withdrawn, 202(8), 402, 405, 408.
- Clauses considered in their proper order, 400.
  - postponed, 401.
- Progress reported, 410, 411.
- Reported from Committee of the Whole, S.O. 20(b), p. 72;  
S.O. 78(2), p. 264.
  - Standing or Select Committees, S.O. 20, p. 72.
- Revival of Committee, 412.
- Right-of-way over motions, 394.
- Royal Assent, 427, 428, 429, 430, 431, 432.
- Second reading, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395.
  - Amendments, anticipation of committee stage, 389, 390, 391, 393(1).
- Contravening policy of Parliament, 392.
- Declaratory of principle, 381.
- Principle must be opposed in toto, 393.
- Subject matter referred to a committee, 386.
- Dropped order, 385.
- Motion negatived, 384.
- Order discharged, 383.
- Result of count out, 384.
- Schedules, 398, 405(2).
- Senate amendments, S.O. 22, p. 73; 97, 282.
- Third reading, S.O. 78, p. 264.
  - Amendments on, 419, 420, 421, 422, 423.
  - Expanded negative, 202(12), (13).
  - Re-committed, 415.
  - Relevancy of, 203, (1) (2) (3).
  - Reversing principle, 401(3).

**Black Rod**

- Bearer of Governor General Messages, 30.
- Bows three times, 30.
- Calls Parliament to Order, 31.
- Heads procession of House to Senate, 30.
- Raps at House of Commons door, 30.
- Received even if there is no quorum, 60(5).

**Books**

- Borrowed from Library, S.O. 125 and 126, p. 368.
- Extracts from in debate, 149(1), 157(4).
- See Chapter on Library, p. 367; 522, 523, 524.

**Bribery**

- Affecting return, S.O. 80, p. 293.
- Indictable offence, p. 436.
- Offer of, a high crime, S.O. 79, p. 293; 432.
- Proviso as to legal expenses, p. 296.
- Statutory provisions respecting elections, 436.
  - (a) giving money, etc., for votes, p. 295.
  - (b) or promoting employment, p. 295.
  - (c) (d) gift or promise, p. 295.
  - (e) advancing money, p. 296.
  - (f) demanding bribe, p. 296.
  - (g) receiving money, p. 296.
  - (h) bribery during or after election, p. 296.

**British North America Act, 1867, in relation to Parliament**

- Addition of senators in certain cases, secs. 26 and 27, p. 461.
- Appointment of Speaker of the Senate, sec. 34, p. 462.
- Appropriation and tax bills, secs. 53 and 54, p. 467.
- Disallowance, secs. 56, 57, 90, pp. 468, 475.
- Disqualification of senators, sec. 31, p. 462.
- Duration of House of Commons, sec. 50, p. 465.
- Exclusive provincial powers, sec. 92, p. 477.
  - of Parliament of Canada, sec. 91, p. 475.
- Increase of House membership, sec. 52, p. 467.
- Language, English and French, sec. 133, p. 487.
- Life membership in Senate, sec. 29, p. 461.
- Majority rules, sec. 49, p. 465.
- Maximum number of senators, sec. 28, p. 461.
- Members of Senate styled as "senators", sec. 21, p. 459.
- Number of Members and Senators, sec. 37, p. 463.
- Oath of allegiance, sec. 28, pp. 485, 492.
- Parliament established, sec. 17, p. 458.
- Privileges, immunities and powers, sec. 18, p. 459.
- Qualifications of Senators, sec. 23, p. 460, sec. 33, p. 462.

**British North America Act, 1867, in relation to Parliament**  
*—Continued*

- Quorum of House of Commons, sec. 48, p. 465.
- of Senate, sec. 35, p. 462.
- Recommendation for money votes, sec. 54, p. 467.
- Representation of Provinces in Senate, sec. 22, p. 459.
- Resignation of senator, sec. 30, p. 462.
- Royal Assent to bills, sec. 55, pp. 467-8.
- Senator not to sit in House of Commons, sec. 39, p. 463.
- Sessions held yearly, sec. 20, p. 459.
- Speaker of House of Commons elected, sec. 44, p. 465.
- Senate appointed, sec. 34, p. 462.
- presides, sec. 46, p. 465.
- , absence of, sec. 47, p. 465.
- Summoning House of Commons, sec. 38, p. 463.
- Summons of Senators (Appointments), sec. 24, p. 461.
- to fill vacancies, sec. 32, p. 462.
- Vacancy in speakership filled, sec. 45, p. 465.
- Voting in Senate, sec. 36, p. 462.

**Budget, 267, S.O. 58, p. 191.**

**Business of the House**

- Adherence to rules, 457, 520.
- Adjournment, S.O. 25, p. 73; 98, 99, 100, 101.
- Bills amended by the Senate, S.O. 20(e), p. 72; S.O. 22, p. 73.
- from Committee of the Whole, S.O. 20(b), p. 72.
- Select Committees, S.O. 20(c), p. 72; 96.
- Ceremonial speeches, 86.
- Conference with Senate, S.O. 22, p. 73.
- Daily routine, S.O. 15(2), p. 69.
- Definition of "business of the House", 80.
- Discussion of "urgent" matter, 100.
- Divisions, S.O. 8, 9, p. 5.
- Effect of adjournment of debate, 98.
- First day of session, 25, 42.
- First reading of Senate Bills, S.O. 15(1), p. 69.
- Government responsibility, 88, 92.
- Intermediate proceeding, S.O. 25, p. 73; 99(2).
- Journals of the House, 102.
- Leader of the House, 88(2).
- Leave to sit again "this day", 101(2).
- Messages from the Senate, 97(1).
- Ministerial explanations, 89, 91.
- Ministers and private Bills, 464.
- Motion to read orders, S.O. 44, p. 161.
- "Next meeting", 101(2).

**Business of the House—Continued**

- No business until Speaker elected, 25.
- Notices of motion, S.O. 15(2) (4), p. 69; 21, p. 73.
- Order discharged, 88(3).
  - of business, S.O. 15(3).
  - not proceeded with, S.O. 7, p. 4; S.O. 19(2), p. 72.
- Personal explanations, 127.
- Prayers, S.O. 15(1), p. 69; 79.
- Precedence given to Bills, 494.
- Private Bills days, S.O. 15(2), p. 69.
- Privileges of Parliament, 103 to 114.
- Proceedings, 84, 85, 87.
- Production of papers, 209.
- Questions, S.O. 39, p. 145; 171, 172, 173, 174, 175.
- Speaking on Orders of the Day, 173.
- Suspension of rules, 10, 476(4).
- Third reading of bills, S.O. 78, p. 264.
- Transaction of business before Address voted, 95.

**Chairman of Committees of the Whole**

- Absence of, S.O. 52(4), p. 188.
- Appeal from ruling, S.O. 59(4), p. 192.
  - to Speaker not permitted, 232.
- Appointment of, S.O. 52(1), p. 187.
- Casting vote, 75(4).
- Deputy of, S.O. 52(5), p. 188.
- Deputy Speaker, 227.
- Function, powers and duties, S.O. 59(4), p. 192; 227.
- Resignation, 232(3).
- Speaker's temporary absence, 227(3).
  - unavoidable absence, 227(2).

**Clerk of the House of Commons**

- Appointment under Great Seal, 443.
- Authorized to pay witnesses, S.O. 69(2), p. 235.
- Bearer of messages to Senate, S.O. 23, p. 73.
- Certifies copies of Journals for Governor General, S.O. 27, p. 75.
- Certifies readings of bills, S.O. 76, p. 264; 425(2).
- Delivers lists of returns to Members, S.O. 85, p. 321.
- Directs and controls staff, S.O. 83, p. 321; 443.
- Duties on election of Speaker, 21, 27.
  - re* questions and notices, S.O. 39, p. 146; 187(1).
- Employs sessional writers, S.O. 86, p. 321.
- Lays private bills on table, S.O. 103, p. 348.
- Main qualifications of, 443.

**Clerk of the House of Commons—*Continued***

Oath of allegiance before Speaker, 454.  
Orders reprinting of private bills, S.O. 113, p. 363.  
Posts up lists of Committees, S.O. 65(3), pp. 233-4.  
Publishes Standing Orders re private bills, S.O. 95, p. 341.  
Permits access to Library, S.O. 123, p. 367.  
Reads question in official language, S.O. 43, p. 161.  
Receives private bills on first day of session, S.O. 94, p. 338.  
Responsible for records of the House, S.O. 83, p. 321.  
Staff takes oath before him, 454.  
Takes precedence over Deputy Ministers, 443.  
Unauthorized to announce vacancies, 27(3).

**Clerk Assistant**

Appointed by commission under Great Seal, 445.  
Commissioner to swear in Members, 445.  
Calls out members' names on division, 445.  
Certifies Member's statements for expenses, 445  
Reading Clerk, 445.  
Reads the questions, 445.  
    reports of Committees, 445.  
Clerk of Committees of the Whole, 445.

**Closure**

Applicable only after discussion has begun, S.O. 33, pp. 106-7.  
Emphasis on word "further", 167(4).  
Essentially Government procedure, S.O. 33, p. 106; 167(4).  
Point of order not excluded, 167(3).  
Subject to ordinary rules, 167(3), 398.

**Committees, Standing and Select**

Adjournment from day to day, 303(3).  
Administering oath, 307.  
No Appeal from Chairman's ruling, 295.  
Appointments, S.O. 65(1), p. 233:  
    Agriculture, (f).  
    Banking and Commerce, (d).  
    Debates, (k).  
    External Affairs, (l).  
    Industrial Relations, (j).  
    Marine and Fisheries, (h).  
    Mines, Forests and Waters, (i).  
    Miscellaneous private bills(c).

**Committees, Standing and Select—Continued**

- Privileges and Elections, (a).
- Public Accounts, (e).
- Railways, Canals and Telegraph Lines, (b).
- Standing Orders, (g).
- Attendance of Members, 288, 292(1), 303(2).
- Committal of Bills, S.O. 77, p. 264; 395 to 413.
- Consider only matters referred to them, 304.
- Consideration of report of previous session, 320(3).
- Counsel may be heard, 302(2), 306, 314(2).
- Disqualified Members, 292(2), (3), (4).
- Documents produced in, 324(3).
- Election of chairman, 303(1).
- Exclusion of strangers, 298(1), 302(3).
- Matters of privilege, 287.
- Meaning of word "committee", 285(1).
- Members of House not on committee, 302.
  - substituted or added, 292(2).
- Notice of appointment of, S.O. 67, p. 234.
- Order of reference enlarged, 304(3).
- Outsiders appointed on, 294(3).
- Portions of the House, 288.
- Power to punish not vested in, 295(2).
- Printing of papers, S.O. 66, p. 234.
- Quorum, 288, S.O. 65(1), p. 233; S.O. 67(2), p. 234.
- Reports, S.O. 68, p. 234; 304(4), 318, 319, 320, 321.
- Secret committees, 298(2), 299.
- Sending for papers, 305.
- Sitting at same time as House, 300.
  - outside Ottawa, 301(1).
- Strangers, presence of, 302(3).
- Sub-Committees, 294.
- Witnesses, S.O. 69, pp. 234-5; 307 to 318; 437.

**Committees (Joint)**

- On Library, S.O. 65(2), p. 234.
- Printing, S.O. 65(2), p. 234.
- Proportion of Membership between Houses, S.O. 65(2), p. 234.

**Committee of Supply**

- Adjournment of, debarred, 230(2).
- Amendments and grievances on going into, 234.
  - in the committee, 242(2), 245, 246.
- Appeal from Chairman's rulings, 232(1).
- Appointment of Chairman, S.O. 52, p. 187.



**Committee of Supply—Continued**

- Chairman's casting vote, 75(4).
- Concurrence in reports from, S.O. 62, p. 192.
- Condition or opinion on vote of money, 242(3).
- Controls public expenditure, S.O. 63, p. 192.
- Count out, 60(2), 241(1).
- Destination of grant not to be altered, 244(3), 246(3).
- Each grant a separate resolution, 238, 242(1).
- Estimates referred to, 238(3).
- Form of supply resolutions, 238(3).
- Grievances before supply, 234.
- Instructions to, not permitted, 226(1).
- Interim supply, S.O. 56(6), p. 190.
- Kept alive during session, 271, 275.
- Monday and Tuesday, S.O. 56(1), pp. 189-90.
- Motion that Chairman leave the chair, 234.
- Order of the day for, S.O. 56(1), pp. 189-90.
- Postponements not permitted, 242(4).
- Procedure in, S.O. 59, p. 192; 242.
- Progress reported, 230(2), (3).
- Reduction of proposed grant, 230(2).
- Relevancy of discussion, 238(2).
- Reporting resolutions, S.O. 62, p. 192.
- Resignation of Chairman, 232(3).
- Rising without making report, 275.
- Sitting discontinued, 271.
- Six debatable motions only, S.O. 56, pp. 189-90.
- Speeches limited to 30 minutes, S.O. 59(3), p. 192.
- Sub-judice matters, 152(3).
- Supplementary estimates, S.O. 56(6), pp. 189-90.

**Committee of Ways and Means**

- Appointment of, S.O. 55, pp. 188-9.
- Appropriation its only jurisdiction, 263(3).
- Bills based on resolutions, 273, 276(3).
- Budget, 267.
- Chairman's rulings (appeals), 232(1).
- Concurrence in reports, S.O. 62, p. 192.
- Function of, 266.
- Increase of tax or duty, 263(3), 273.
- Imposition of import duty, 263(3), 266, 270(3).
- Kept alive by the House, 275.
- New tax, 266.
- Procedure in, S.O. 59 and 60, p. 192.
- Quorum, 60(2), 228(3).
- Readjustment of taxation, 268.

**Committee of Ways and Means—Continued**

- Reduction of fiscal duties, 265(1).
  - revenue, 265(1).
- Relevancy, 276.
- Repeal of taxes, 268(1).
- Report, S.O. 62, p. 192.
- Resolutions reported without amendment, 262.
- Scope of, 266(1).
- Speaker leaves Chair without debate, S.O. 58, p. 191.
- Substitute tax, 268.
- Variation of taxation, 268.

**Committee of the Whole**

- Adjournment of its sittings not allowed, 230(2).
- Appointment of, 52(1), p. 187; 228.
- Chairman (absence of), 52(4), p. 188.
  - conduct of challenged, 232(2).
  - leaving the Chair, S.O. 60, p. 192; 242(2).
- Resignation, 232(3).
- Rulings appealable to House, S.O. 59(4), p. 192; 232(1).
- Vote, 75(4), 242.
- Consolidation of bills, 221.
- Dividing bills, 221.
- Instructions to, 221.
- Interruption of sitting, 231.
- Money resolutions, S.O. 61, p. 192.
- Motion not required to go into Committee, S.O. 53, p. 188.
- Outbreak of disorder, 231.
- Private bills, S.O. 54, p. 188.
- Proceedings on bills (*see* Bills, Private and Public).
- Public bills (*see* Ch. X.)
- Quorum, 60(2), 228(3).
- Reports on bills, S.O. 20(c), p. 72.
  - resolutions, S.O. 20(b), p. 72.
- Sitting not to be adjourned, 230(2).
- Six o'clock, Wednesday and Friday, S.O. 6(3), p. 4.
- Speaker's presence in, 242(7).
- Speeches limited to 30 minutes, S.O. 59(3), p. 192.
- Standing Orders of House applied, S.O. 59(1), p. 192.
- Superseded question revived, 412.
- Vote in (not recorded), 242(6).
- Witnesses, 330.

**Debate**

- Address in reply, S.O. 38, p. 141.
- Adjournment, 99, 165(2).

**Debate—Continued**

- Alterations in reported speeches, 168.
- Amendments are separate questions, 165(10).
- Anticipation, 131.
- Bruce, Dr., refuses to withdraw statement, 136.
- Calling upon member to speak, S.O. 29, p. 105.
- Clemency law, 160.
- Closure, S.O. 33, pp. 106-7; 167.
- Curtailment of debate, S.O. 37, p. 108; 167.
- Debatable Motions, S.O. 32, p. 106; 127.
- Debates in other House, 147.
- Definition of debate, 120.
- Disallowance, 161.
- Disorder in the House, 128.
- Documents not before the House, 159.
- Explanation, 91(3), 127(3), (4); 134.
- Fleming, M.P., deprived of his right to speak, 55(2).
- Freedom of speech, 117, 119.
- House (reflections on), 134(2).
- Hypothetical cases, 154(2).
- Imaginary letter, 158(4).
- Individuals discredited, 150.
- Injurious reflections, 141, 150.
- Interruptions, 126, 143.
- Irrelevance, S.O. 34(2), p. 107.
- Judges, reference to, 149(j), 152(4).
- Language, threatening, 154(1).
- List of speakers, 121.
- Members, libels on, 108(3).
  - Passing between Member and Chair, S.O. 12, p. 5.
  - Table and Chair, S.O. 12, p. 5.
- Reading during debate, 164.
- Reflections on, 127(2), 128(1).
- To rise uncovered, S.O. 28, p. 105.
- Silent during debate, 143, 164.
- Naming Member, 134.
- New Member, preference to, 121(1).
- Newspaper, complaint against, 157(7).
  - extracts, 157(3).
- Past acts and proceedings, 149(k).
- Persistence in unparliamentary language, 134, 138.
- Personal allusions, 128, 140.
  - explanations, 127(3) (4).
- Point-of-order, S.O. 34, p. 107; 156, 159(5).
- Precedence in debate, 121, 122.
- Private communication, 159(3).

**Debate—*Continued***

- Proceedings, meaning of, 84, 118.
- Public and private papers, 159.
- "Purchased by legislation", 154(6).
- Reading speeches, 144.
- Reference to debate of same session, 148(3).
- Relevancy, S.O. 34(2), p. 107; 119(3).
- Repetition, S.O. 34(2), p. 107.
- Reply, S.O. 37(2), p. 108.
- Reports (Hansard), 168.
- Rescission, 162.
- Restrictions sanctioned by usage, 149.
- Reviving debate, 148.
- Seconder of motion, 165(1) (3) (4) (8) (9).
- Senate, words against, S.O. 35, p. 107.
- Sovereign and Royal Family, reflections on, S.O. 35, p. 107; 127(2).
- Speaker's interference, 132, 133.
- Speaking more than once, S.O. 37, p. 108; 125(1) (4); 142.
- Speech made in Committee of the Whole, 147(2).
- Statement by Member respecting himself, 145.
- State paper quoted by Minister, 159.
- Statement not made in the House, 157(5).
- Sub-judice matter, 149, 152.
- Substantive motion, 127(2).
- Telegrams, 176, 177.
- Time limit for speeches, S.O. 37, p. 108; 123, 124, 125.
- Treasonable language, 151.
- Unparliamentary words and phrases, 155.
- Unsigned letter, 158(3).
- "Untrue", use of word, 154(5).
- Votes of House (reflections on), S.O. 35, p. 107.
- Withdrawal of member, S.O. 30, p. 105; 135, 136, 137.  
offensive words, 129, 135, 138.
- Words taken down, 139.

**Deputy Speaker**

*See* Chairman of Committees of the Whole.

**Divisions**

- Debate closed, S.O. 8, p. 5.
- Demand to record yeas and nays, S.O. 9, p. 5.
- House ready for the question, 63.
- Not Interrupted by breach of order, 64(5).
- Majority rule, 67.
- Member's pecuniary interest, S.O. 11, p. 5; 66.

**Divisions—Continued.**

- Member voting inadvertently, 64(2).
- Method of voting, 63.
- Name incorrectly recorded, 64(4).
- Pairs (practice of pairing), 65.
- Putting the question, 64(1).
- Speaker's casting vote, S.O. 10, p. 5; 75(1) (2) (3).

**Estimates**

- See* Committee of Supply.

**Evidence**

- Not Actionable by law, 314.
- Discussion of, 324.
- Of Member of the House, 313.
- Printing of, 317.
- Publication of, 320(5).
- Reference to, 318(1) (3).
- Of Senator, 312.

**Expulsion**

- Consequential upon Court sentence, 58.
- Criminal Code applied, 57.
- Inherent right of House, 56.
- Instances of, 58(2).
- Member expelled is eligible, 59.
- Rose, Fred, expelled, 58(2).

**Galleries of the House**

- Speaker's, general, ladies', members', officers', press, senators', 74(2).
- Misconduct in, S.O. 14, pp. 5-6; 74(5).
- Sergeant-at-arms duty, 74(5), (6).
- Speaker's authority, S.O. 13, p. 5, 74(4).

**Government and House of Commons**

- Closure moved by a Minister, S.O. 33, p. 106.
- Control of sessional program, 88, 92.
- Introduction of financial measures, 243.
- Leader of the House, 88(2).
- Ministers answer questions, S.O. 39, p. 145; 181.
  - cannot promote private bills, 93(3), 464.
- Prime Minister, 81.
- Vote of confidence, 90.
  - no-confidence, 229(2).

**Governor General**

- Authority theoretical, 24.
- Dissolves Parliament, p. 465.
- Presence of in House of Commons, 52.
- Recognizes privileges of the House, 31.
- Recommends money measures, p. 467.
- Represented by Deputy, 25(2), 26, 427.
- Royal Assent, p. 466; 426, 427, 428, 429.
- Speaker's election, 32(1).
- Summons Members in session, p. 463.
- Senators, pp. 461-2.

**Habeas Corpus**

- Binding upon all persons, 115.

**House of Commons**

- Adjournment over holidays, 45.
- No authority to open its own sessions, 24.
- Committees of the Whole, S.O. 52, pp. 187-8.
- Compared with U.K. House, 4, 5, 6.
- Court of record, 53, 54.
- Divisions, S.O. 8, 9 and 10, p. 5.
- Evolution of, 3.
- Expulsion from, 56.
- Galleries of, 74(1).
- Governance of its proceedings, 7, 8(1).
- Greatest power of state, 2.
- House summoned for session, 23.
- Immunities, 105.
- Internal economy, S.O. 81, p. 313; 437, 438.
- Interpretation of its rules, 7(2), 8(3).
- Introduction of Members, 21, 22.
- Journals of, 102.
- Majority, power of, 67.
- Master of Speaker's rulings, 69(2).
- Meaning of "House of Commons", 18.
- Members' seats, 20.
- Named under B.N.A., sec. 17, p. 458.
- Oath and affirmation, 15.
- Order of business on first day of session, 43.
- Privileges of, 32(2), 103, 108, 109, 110, 111, 112.
- Procedure in, 5, 6, 7, 8, 9.
- Quorum, 60, B.N.A., sec. 48, p. 465, S.O. 3(2), p. 4.
- Secret sittings, 46, 47, 48, 49.
- Sessional orders, 9(1), (2).
- Sole dispenser of aid and supply, S.O. 63, p. 193; 238.

**House of Commons—Continued**

- Speaker's Chair, 29.
- Standing Orders, 9(1), 10, 11.
- Statute regulation re procedure, 13.
- Suspension of Members, 55.
  - Standing Orders, 10.
- Usages, 8(1) (2).
- Violation of Member's oath, 16(2).
- Women Members, 14.

**Instructions**

- To a Committee, 220.
- None to Committee of Supply, 226(1).
- To Committee of the Whole, 223.
- Definition of, 220(1).
- Guiding principle of, 220(2).
- To a Joint Committee, 224.
- Limitation of, 220.
- Mandatory, 221(2).
- Object sought by, 221.
- Permissive, 221(1).
- When moved, 225.

**Journals of the House**

- Definition of, 102.
- Evidence in law courts, 102(3) (4).
- Governor General's copy, S.O. 27, p. 75.
- Preparation of under the Clerk, 443.
- Records usages of Parliament, 8(2).
- Speaker's casting vote included, S.O. 10, p. 5.

**Language**

- Acts printed in English and French, B.N.A. Act, sec. 133, p. 486.
- Chairman of Committees of the Whole, S.O. 52(2), p. 187.
- English and French official, B.N.A. Act, sec. 133, p. 486.
- Journals of the House, Sec. 133, B.N.A. Act.
- Motions, S.O. 43, p. 161.
- Prayers, S.O. 15(1), pp. 69, 79.
- Public bills, S.O. 74, p. 263.
- Records of the House, B.N.A. Act, sec. 133, p. 486.

**Leader of the House**

- Directs the course of sessional business, 88(2).
- On Discussions against public interest, 91(4).

**Leader of the House—Continued**

- May ask the confidence of the House, 90.
- Ministerial changes, 89(3).
- Speeches of, not limited to 40 minutes, S.O. 31, p. 105.

**Leader of the Opposition**

- Head of H.M. Loyal Opposition, 83, S.O. 31, p. 105.
- Queries as to ministerial changes, 89(2).
- Speeches not limited to 40 minutes, S.O. 31, p. 105.

**Library of Parliament**

- Access to during recess, S.O. 123, p. 367.
  - session, S.O. 121, p. 367.
- Books of reference, S.O. 126, p. 368.
- Catalogue, S.O. 120, p. 367.
- Governed by Library of Parliament Act, 522.
- Loan of Books during session, S.O. 122, p. 367.
- Members borrowing books, S.O. 124, p. 368.
- Number of volumes in, 523.
- Other persons than Members borrowing books, S.O. 125, p. 368.
- Parliamentary Librarian, 522.
- Report of books missing, S.O. 127, p. 368.
- Reporting of pre-Confederation debates, 524.
- Subscription to newspapers, S.O. 128, p. 368.
- Transfer of from Quebec to Ottawa, 523.

**The Mace**

- Black Rod met with, 30(2).
- Entrusted to sergeant-at-arms, 450(1).
- General design of, 450(3).
- On stays at lower end of Table, 228(2).
- On the Table, 26.
- Procession to the Senate, 26, 30.
- Symbol of House's authority, 450(1).

**Majority**

- Chairman's two votes on private bills, S.O. 107, p. 354.
- Not infallible, 67(3).
- Originated in Magna Carta, 67(1).
- Principle of, in B.N.A., sec. 49, p. 465, 67(2).
- Requisite to elect speaker, 27(2).
- Speaker's casting vote, S.O. 10, p. 5.

**Members**

- Assault on, 109(1), 104(4).
- Attendance, S.O. 5, p. 4.



**Members—Continued**

Bribes offered to, S.O. 79, p. 293; 436.  
Death of (tribute to), 43(14).  
Deportment, 126, 128, 164.  
Disorderly conduct, 128, 129, 130.  
Disqualification, pp. 432, 436, 442.  
Each represents whole nation, 17.  
Election of, 56(1).  
Eligibility of women, 14.  
Expenses, p. 440.  
Expulsion, 56.  
Freedom from arrest, 103.  
Immunities, 105(1), p. 430.  
Indemnity, pp. 438, 439, 440.  
Ineligible persons, pp. 432, 442.  
Insults to, 104(4).  
Introduction of, in the House, 21.  
Libels on, 108(3), 112.  
Naming, 134.  
Oath or affirmation, 15, 16.  
Parliamentary Agent, S.O. 117, p. 365; 521.  
Pecuniary interest in question, S.O. 10, p. 5; 66(1).  
Penalty for sitting when disqualified, 434.  
Personal explanations, 127(3) (4).  
Private Members' days, S.O. 15(3), pp. 69, 71.  
Privileges, 103 to 113.  
Resignation, pp. 443-4.  
Retiring allowances, p. 448.  
Seats and desks in Chamber, 20.  
Sub-poena, resistance to, 311, 313.  
Suspension of, 55.  
Violation of oath, 16(2).  
Witnesses, 313.

**Ministers**

Amending own motion, 204.  
Cabinet changes, 89(3).  
Closure, moved by, S.O. 33, p. 106.  
Of Finance submits Estimates, 238.  
Leader of the House, 88(2).  
Prime Minister, 81.  
Private Bills, sponsoring, 93(3), 464.  
Reduction of Taxation, 265.  
Taxes, 265(1).  
Cabinet changes, 89.

**Money Bill**

*See also* Aid and Supply.

Amendments, 242, 244, 245, 246.

Definition of, 243.

Object of resolution preceding bill, 250(3).

Private Members cannot introduce, 249.

Procedure, 247.

Recommendation of the Crown, 243.

**Money Resolutions**

Abstract recommendations, 250(2), 251(4).

Alternative proposals, 244(3), 252.

Amendments, 242(2), 244, 245.

C.N.R. expenditures, 253.

Charge, a subsidiary feature, 235, 277.

Direct order to Government, 249(2)(3), 257, 260.

Fundamental terms, 250(4).

Furnishing machinery for future expenditure, 251(1), 277(3).

Object of resolution, 250(3).

Railway construction on subsidy, 258.

Recommendation of the Crown, 246, 250(5), 370.

To release a Government claim, 256(2).

Salary increases, 249, 251(1).

To set up a new branch in the Service, 366, 367.

To take over provincial debts, 256(3).

**Motions**

Absence of Member who gave notice, 188.

Amendments, S.O. 45, p. 161; 201.

Becomes resolution, order vote, 198.

Carried, cannot be repeated, 200.

For chairman to leave the Chair, S.O. 60, p. 192; 412.

To commit, S.O. 46, p. 161; 395.

Dealing with business of the House, 88(2).

Debatable, S.O. 32, p. 106; 127.

Definition of, 191.

Dilatory, 195.

Dropped, S.O. 48, p. 162.

Incidental, 197.

Irregularities, 199.

Member's right to move, 192.

Notice, S.O. 41, p. 157; S.O. 47, pp. 161-2.

One at a time, 200(2)(3)(4).

Pre-requisite for a decision, 191.

Previous question, S.O. 51, p. 162; 194.

Privileged, S.O. 44, p. 161.

**Motions—Continued**

- Production of papers, S.O. 47, pp. 161-2.
- Read in both languages, S.O. 43, p. 161; 193.
- Reference motion precludes amendment, S.O. 46, p. 161.
- Routine motions, S.O. 32(m), p. 106.
- Seconding of, compulsory, S.O. 43, p. 161; 192.
- Substantially same as previous motion, 194, 200.
- Superseding, 195.
- Vagueness of, 199(2), 202(4).
- Withdrawal, S.O. 49, p. 162; 186(1), 200(5), 202(8).
- In Writing, S.O. 43, p. 161.

**Naming Member**

- Disregarding authority of the Chair, 134.
- Followed by suspension, 134, 136.
- Member may explain and withdraw, 134, 136.

**Newspapers**

- Complaints against, 157(7).
- Extracts from, 157(3).

**Notices**

- Bill, resolution or address, S.O. 41, p. 157.
- Corrections in, 187.
- Dividing or consolidating bills, 185.
- Formal motions, 188(4).
- Modification of, 187(2).
- New, 187(3).
- Private bills, Amendments, S.O. 112, p. 362.
  - Application to introduce, S.O. 96, p. 341.
  - Change of promoter, 188(3).
  - Consideration in Committee, S.O. 116, p. 354.
  - Dispensed with, 468.
  - Provisions of bill not covered, S.O. 108, p. 358.
  - Waived, S.O. 42, p. 157.

**Notices of Motion**

- Called and not proceeded with, S.O. 48(1), p. 162.
- Dropped, S.O. 48(1), p. 162.
- Exemption, S.O. 48(4), p. 162.
- Marked with asterisk, S.O. 47, p. 161.
- Once moved ceases to be notice of motion, 198.
- Only one at a time, S.O. 48(3), p. 162.
- Restored on Order Paper, S.O. 48(1), (2), p. 162.

**Oath**

- Affirmation is valid, 15.
- Of Allegiance, 15.
- B.N.A. Act, sec. 128, p. 485.
  - Schedule (text of oath), p. 492.
- Object of, 16(1).
- Violation of, 16(2).

**Officers of the House**

- Appointment of House officers, 447.
  - Sessional Clerks, S.O. 86, p. 321.
- The Clerk (*see* Clerk of the House of Commons), 443.
  - Executive authority, S.O. 83, p. 321.
- The Clerk Assistant, 445.
- Control of, one of the House's privileges, 446.
- Sergeant-at-Arms, 449.
- Sessional employees, S.O. 86, p. 321.
- Speaker's control, S.O. 83, p. 321.

**Order**

- Breaches of, in the House, arising during division, 64(5).
- In Committee of the Whole, S.O. 59(4), p. 192.
- Definition of point of 70; S.O. 34, p. 107.
- Enforced by Speaker, 68(2), S.O. 12, p. 5.
- Interruptions forbidden, 126(2), 143.
- Member's statement to be accepted, 145.
- Naming a Member, 134.
- Personalities, 128, 140.
- Raised in proper time, 70(4).
- Speaker may consult House, 71(6).
  - power to adjourn in case of disorder, 128(2).

**Orders of the House**

- Amending Standing Orders, 11.
- Arrangement of, for sittings, S.O. 15 to 27, pp. 69-75.
- Duration of Standing Orders, 9(1).
- Interpretation of, 8(3).
- Proceedings governed by, 8(1).
- Sessional, are temporary, 9(1).
- Suspended, 10.
- Superseded by statute regulations, 13.
- Unprovided cases, S.O. 1, p. 1.

**Petitions**

- To be Addressed to the House, 331, 332.
- Affecting the House, 345.

**Petitions—Continued**

- Aliens cannot present, 336.
- Asking for a new trial, 348.
- Debates, making reference to, 345.
- Delays in presenting, 335.
- Elections, respecting, 347.
- Fiscal changes, asking for, 349.
- Forgery in connection with, 337.
- Form of, 332.
- For Grant of money, 350.
- Involving expenditures, 350.
- Member's own, 341(2).
  - duty regarding, 338.
- Presentation not compulsory, 342.
- Presented by Member, S.O. 70, p. 255.
  - Telegram not acceptable, 334.
- Printing of, 344.
  - for private bills, S.O. 93, p. 335.
- Procedure, S.O. 70(7) (8), p. 255.
- Reading of, in the House, 343.
- Remonstrance not allowed, 333.
- Respectful language, S.O. 70(4), p. 255; 333.
- Right of petitioning, 331.
- Signatures, 334.
- Speaker cannot present, 340.
- Urgent cases, 346.

**The Previous Question**

- Allows Member to speak again, 216(3).
- Cannot be moved on an amendment, 217.
- Debate on subject to Closure, 216(5).
- Effect on third reading of a bill, 219.
- Form of, S.O. 51, p. 162.
  - cannot be changed, 218.
- Mover of, may vote against it, 216(4).
- Not permitted in any committee, 217(5).
- Precludes amendment, S.O. 51, p. 162; 216(2).
- When carried, 219(2).

**Privileges**

- Acceptance of professional fees, 108(6).
- Accusations against the Chairman, 108(2).
- Charges and imputations, 108(4).
- Dignity of the House, 108(1).
- Freedom from arrest, 103(1).
- Habeas corpus, 115.

**Privileges—Continued**

- Happening outside Parliament, 114.
- House's constitutional privileges, B.N.A. Act, sec. 18, p. 459.
- House's control absolute, 103, 107.
- Libels on Members, 108, 110, 112.
- Misunderstood by Members, 113.
- Molesting Members, 110.
- New ones cannot be created, 106(1).
- Offenses of previous sessions, 109(6).
- Offering bribes, S.O. 79, p. 293; 108(5).
- Procedure on breach of, 104.
- Publication of evidence, 109(3).
- Resistance to Sergeant-at-Arms, 109(4).
- Right to commit for contempt, 107(1).
- Service of process on Member, 109(5).
- Speaker's function, 104.
- Threats to Members, 112(2).
- Urgent matters, 104(4).
- Witnesses and petitioners, 109(2).

**The Question**

- Agreed to, it becomes an order of a resolution, 191.
- Every decision based on a question, 191.
- Proposed in the words of the mover, 191(3).
- Putting the question, 63, 64.
- Subject-matter of the motion, 191(3).

**Questions**

- Information sought my Members, S.O. 39, p. 145.
- Cannot be addressed to Speaker, 184.
  - based on newspaper report, 177.
  - on a telegram, 179(4).
  - prefaced, 173(4).
- Forty-eight hours' notice, S.O. 41, p. 157.
- May become a notice of motion, S.O. 39(4), p. 146.
- Minister may demand notice, S.O. 39(4), p. 146.
  - ask for order for return, S.O. 39(5), p. 146.
- On orders of the day being called, 173.
- One private member to another, 175.
- Restrictions on, 171.
- Speaker's authority, 172.
- Starred, S.O. 39(2a), p. 145.
- Subject matter of, 178.
- Supplementary, 182.
- in Violation of privileges, 172.

One at least every year, B.N.A. Act, sec 20, p. 457.  
Parliament cannot open own session, 24.  
Speaker's election, B.N.A. Act, sec. 44, p. 465.  
Summoned by Governor General, 23.

**The Speaker**

- Absence of, 227.
- Adjourns House in case of disorder, 128(2).
- Admissions to Library, S.O. 122, p. 367.
- Appeals from his decisions, S.O. 12(1), p. 5; 69(3).
- Approbation by Crown not essential, 32(2).
- Asserts House's privileges, 31(1).
- Casting vote, S.O. 10, p. 5.
- Changing own ruling, 69.
- Communications to the House, 68(2).
- Conduct challenged, 72.
- Consultations, 71(2).
- Continues in office after dissolution, 36.
- Corrections in motions, 199.
- Count out, 60.
- Criticism of, 72.
- Days when he leaves chair without question, S.O. 56, p. 189.
- Death of, 39(1), p. 31.
- Debate on points of Order, S.O. 10, p. 5; S.O. 34, p. 107.
- Decides points of Order, 70(6), 71.
- Directs member to discontinue speech, S.O. 34(2), p. 107.
- Discussion of urgent matter, 100(6).
- Doubtful questions of procedure, 71(6).
- Duties of, 68(2).
- Election of, 26, 27, 28.
  - during session, 38(3), 39.
- Fixes hours for staff attendance, S.O. 91, p. 323.
- Galleries under his authority, 74(2).
- Impartiality, 68(1), 72(2).
- Internal economy, S.O. 81, p. 313; 437, 438.
- Interrupts proceedings on Address, S.O. 38(3) (4) (5), p. 141.
- Issues warrants, 68(2).
- Jurisdiction, 68(2).
- Lengthy replies to questions, S.O. 39(4), p. 146.
- Librarian's report, S.O. 120, p. 367.
- Members' resignations, pp. 443-4.
- Naming member, 133, 134.
- Official mouthpiece of House, 68(4).
- Parliamentary agents under him, S.O. 117, 118, p. 365.
  - Library subscriptions, S.O. 128, p. 368.
- Permanency of not feasible, B.N.A. Act, sec. 44, p. 465.
- Petitions, cannot present, 340.
- Powers of as head of a Department, 441.
- Prayers read by, in English and French, S.O. 15, p. 69.
- Puts the question, 64.
- Question respecting himself, 63(2).



**The Speaker—Continued**

- Quorum, House counted, 60.
- Reads motion in both languages, S.O. 43, p. 161.
- Reflections on, 68(1).
- Removal of, 38.
- Servant of the House, 31, 40.
- Unavoidable absence, 227(2).
- Vacancies in House membership, 33.
  - in House service, S.O. 92, p. 323.

**Speaking on Orders of the Day**

- Inadmissible questions, 171.
  - Addressed to Speaker, 438.
  - Could be inserted on Order paper, 172(3).
- One member to another, 175.
- Speaker's control of, 172.
- Unauthorized by Standing Orders, 173.

**Unprovided Cases**

- Usages of United Kingdom House, S.O. 1, p. 1.

**Witnesses**

- Attendance and payment, S.O. 69, pp. 234-5; 327.
- Certificate of Chairman, S.O. 69(1), pp. 234-5.
- In Committee of the Whole, S.O. 69(1), pp. 234-5; 330.
- Examined by Counsel, 314(2).
- Freedom from arrest, 109(2), 309.
- In the Chamber, 309, 328-329.
- Member examined, 313.
- Oath administered, 307, 328.
- Prisoner needed, 310.
- Protection of, 309.
- Senator required, 312.
- Summoned by the House, S.O. 69, pp. 234-5.
- Tampering with, 308.
- (See Senate and House of Commons Act, p. 437.)